

**CITY OF KNOXVILLE**

**REQUEST FOR PROPOSALS**

**PROFESSIONAL CONSTRUCTION MANAGER AT  
RISK FOR A NEW PUBLIC SAFETY COMPLEX**

**Proposals to be Received by 11:00:00 a.m., Eastern Time  
May 17, 2019**

Submit Proposals to:  
City of Knoxville  
Office of the Purchasing Division  
City/County Building  
Room 667-674  
400 Main Street  
Knoxville, Tennessee 37902

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**Request for Proposals**  
**Professional Construction Manager at Risk for a**  
**New Public Safety Complex**

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**City of Knoxville  
Request for Proposals  
Professional Construction Manager at Risk for a  
New Public Safety Complex**

**I. Statement of Intent**

The City of Knoxville is requesting proposals from responsible firms or teams to provide Professional Construction Manager at Risk (CMAR) services for a New Public Safety Complex. It is anticipated that, beginning in July 2019, the City of Knoxville will require the services of a CMAR for both Pre-Construction and Construction Services. The selected CMAR will contract directly with the City of Knoxville under a Guaranteed Maximum Price (GMP) delivery.

**II. RFP Time Line**

Availability of RFP .....April 22, 2019

Pre-proposal conference.....May 7, 2019

Deadline for questions to be submitted in writing to the  
Purchasing Division .....May 10, 2019

**Proposals Due Date ..... May 17, 2019**

This timetable is for the information of submitting entities. These dates are subject to change. **However, in no event shall the deadline for submission of the proposals be changed except by written modification from the City of Knoxville Purchasing Division.**

**NOTE:** A Pre-Proposal Conference will be held on Tuesday, May 7, 2019, at 10:00 a.m. Eastern time in the City of Knoxville Finance Conference Room, room 662 on the 6<sup>th</sup> Floor of the City County Building, 400 Main Street, Knoxville, TN 37902. **Attendance at the Pre-Proposal Conference is mandatory for all prospective submitting parties and/or their representatives.** A review of the RFP is highly encouraged prior to the conference. A site visit to the Tennova Campus in North Knoxville will immediately follow the meeting.

**III. Background**

The Knoxville Police Department's current headquarters at the Safety Building on 800 Howard Baker Jr. Avenue, built 50 years ago, is antiquated and insufficient for the technology and space required for current KPD operations. The space no longer accommodates the entire KPD staff and the KFD Administration staff currently leases space at a separate location. The City of Knoxville desires to renovate an existing site to house over 300 employees, vehicles, equipment, the City courtroom, and the City Pension Board.

The City of Knoxville (City) is seeking a highly qualified Construction Manager at Risk (CMAR) under a Guaranteed Maximum Price (GMP) contract to serve as a member of the

Project Team in conjunction with the City, the City's Program Manager, the Project Architect and Other Design Professionals to provide preconstruction and construction services for the New Public Safety Complex Construction Project. "Owner" in this Request for Proposals (RFP) refers to the City of Knoxville.

The Owner's objectives in this procurement are:

1. Obtaining the early involvement and input of the CMAR during the design.
2. Ensuring competitive market pricing for the Project.
3. Enabling accurate budgeting of the project during the design phase.
4. Securing CMAR guarantees of construction cost, coordination, and schedule.
5. Enabling the separate packaging of multiple components of the project if necessary to meet project requirements.
6. Expediting project delivery within the limitations of the Guaranteed Maximum Price (GMP) form of contract.

#### **IV. General Conditions**

4.1 The following data is intended to form the basis for submission of proposals to provide Professional Construction Manager at Risk services for the City of Knoxville.

4.2 This material contains general conditions for the procurement process, the scope of service requested, contract requirements, instructions for submissions of proposals, and submission forms that must be included in the proposal. The RFP should be read in its entirety before preparing the proposal.

4.3 All materials submitted pursuant to this RFP shall become the property of the City of Knoxville.

4.4 To the extent permitted by law, all documents pertaining to this Request for Proposals shall be kept confidential until the proposal evaluation is complete and a recommendation submitted to City Council for review. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee and other appropriate City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

4.5 Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFP shall be made **in writing and be in the hands of the Assistant Purchasing Agent by the close of the business day on May 10, 2019.** Questions can be submitted by letter, fax (865-215-2277), or email to [powens@knoxvilletn.gov](mailto:powens@knoxvilletn.gov). The City of Knoxville is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Proposals, the Purchasing Division will post them to the City's website at [www.knoxvilletn.gov/bids](http://www.knoxvilletn.gov/bids). Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any proposer to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his proposal as

submitted. All addenda so issued shall become part of the Contract Documents.

4.6 The City of Knoxville reserves the right to (a) accept or reject any and/or all submissions of proposals; (b) to waive irregularities, informalities, and technicalities; and (c) to accept any alternative submission of proposals presented which, in its opinion, would best serve the interests of the City. The City shall be the sole judge of the proposals, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

4.7 Included in the Contract Documents is an affidavit that the undersigned has not entered into any collusion with any person in respect to this qualification. The qualifier is required to submit this affidavit with the submission. Also included is the Diversity Business Program contracting packet. Submissions must indicate on the enclosed form whether or not the proposer/qualifier intends to use subcontractors and/or suppliers from one of the defined groups. Proposers/Qualifiers are advised that the City tracks use of such use, but it does not influence or affect evaluation or award.

4.8 Subsequent to the Evaluation Committee's review and the Mayor's recommendation of a firm(s), Knoxville City Council approval may be required before the final contract may be executed.

4.9 All expenses for making a submission of proposal shall be borne by the submitting entity.

4.10 Any submission of proposals may be withdrawn up until the date and time for opening of the submissions. **Any submission not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of 120 days to the City of Knoxville for the services set forth in the Request for Proposals until one or more of the submissions have been duly accepted by the City.**

4.11 Prior to submitting their proposals, proposers are to be registered with the Purchasing Division through the City of Knoxville's online Vendor Registration system. Instructions for registering on-line are available at [www.knoxvilletn.gov/purchasing](http://www.knoxvilletn.gov/purchasing). **Proposals from un-registered proposers may be rejected.**

4.12 **NO CONTACT POLICY:** After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this proposal is strictly prohibited, unless such contact is made with the Purchasing Division representative listed herein or with said representative's authorization. Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction. Proposals must include a notarized No Contact/No Advocacy Affidavit (to be found in the "Submission Forms" section of this document).

4.13 **INCLEMENT WEATHER:** During periods of inclement weather, the Purchasing

Division will enact the following procedures with regard to solicitations and weather delays:

- If City offices are closed due to inclement weather on the date that bids/proposals/qualifications/letters of interest are due into the Purchasing Office, all solicitations due that same day will be moved to the next operational business day.
- The City of Knoxville shall not be liable for any commercial carrier's decision regarding deliveries during inclement weather.

## **V. Scope of Service**

The goal of the Owner's New Public Safety Complex Construction Project is to provide facilities to maximize functionality, community attractiveness, and provide a high level of Public Safety Service to the residents of the City of Knoxville. The Scope of Services for the project will include but not be limited to areas to accommodate the following:

1. Knoxville Police Department Headquarters
2. Knoxville Fire Department Headquarters
3. Knoxville Municipal Court
4. Knoxville Pension Board Offices
5. Knoxville Emergency 911 Backup Call Center

The construction budget is \$35.5 million based on the current program scope of work. The scope of the project may be modified by the City in order to meet the long term needs of the City provided the total costs are within the overall program budget.

The schedule of the project calls for the completion of the design development phase and securing of a GMP not later than the end of October of 2019 and final occupancy not later than the end of 2021. This schedule is subject to change by the Owner.

The City intends to bring the CMAR team into the project during the early stage of the design process and the CMAR shall become a member of the Owner's Project Team, consisting of the City, the City's Program Manager, Architect, Engineers and other design professionals. The CMAR must have demonstrated experience in the delivery of pre-construction services and shall be responsible for construction cost estimates and construction budget control. The CMAR will be expected to work collaboratively with others on the Project Team by reviewing the design during the entire process to ensure constructability, value analysis, phasing and scheduling, DBE participation, subcontractor implementation, and the direction of all construction activities.

The CMAR must comply with the requirements of all applicable federal, state and local laws and regulations. The CMAR and all its subcontractors must not have been declared ineligible to perform work in Tennessee. Prior to the commencement of construction phase services and subsequent to the completion of the Contract Documents, the CMAR shall furnish to the City a Guaranteed Maximum Price (GMP) for the entire construction phase consistent with the agreed upon construction budget, schedule, and the City's DBE goals for the project.

The pre-construction phase services will commence no later than July 2019 and will continue through the completion of the design documents and the bidding of all phases of the work for the entire program. The City reserves the right to make changes in the schedule as requirements of

the project dictate.

The City at its discretion may also elect to add additional project staff on a contract basis to the Project Team at some point prior to the completion of the Design Phase of the Project.

The CMAR shall be responsible for security of the site until completion and the City makes acceptance of the project.

## **Pre-Construction Services**

### **A. Schedule**

1. The CMAR shall collaborate and cooperate with the City, Program Manager, and the Design Team in the development of a Master Pre-Construction Schedule beginning with the Design Development Phase and ending with the award of the GMP. The Master Pre-Construction Schedule should be realistic and achievable and should be distributed to the Project Team and monitored regularly during design phase review meetings to ensure a timely design phase and a prompt construction start date.
2. The pre-construction schedule will outline key milestones including but not limited to design phases, budget delivery dates, owner submission and review dates, agency review dates, release of documents dates for intermediate and final pricing and tentative bid dates. The schedule should also identify long lead items and significant Owner Furnished Equipment, if any, that does require early procurement.
3. Concurrent with the submission of each design budget reconciliation, as defined below, the CMAR shall submit to the City an updated Critical Path Method (CPM) schedule or other suitable schedule method suitable to the City reflecting any revisions in the Project Budget that will affect the construction schedule. Activity detail on the schedules should directly correspond to the budget line items.
4. Concurrent with the submission of a reconciled budget estimate for each phase of the Work, the CMAR shall provide pertinent information and assist in the development of a Master Construction Phase Schedule beginning with the CMAR's mobilization and ending with Occupancy. The Schedule shall include, at a minimum, the Specification Divisions of the Work, as defined in the Architect's Specifications (Construction Specifications Institute Format) required to adequately represent to the Owner the complete Scope of Work and define the projects critical path and associated activities.

### **B. Document Review**

1. Pre-Construction Services review meetings shall be held twice monthly through the Design Development Phase and monthly during the Construction Documents Phase.
2. The CMAR will develop and maintain an Issues and Answers Log (web-based or computer generated) during the Design Phases to aid in the prompt transfer of

information between all members of the Project Teams. The Log will be monitored and updated on a continual basis and addressed at review meetings.

3. The CMAR shall provide regular input to the entire Project Team on issues of constructability, budget/schedule impact, and phasing as specific phases of the overall design are developed to ensure the project is within budget and schedule parameters.
4. The CMAR shall at no additional cost to the City engage the services of outside consultants or subcontractors in the review and budgeting of particular building systems or issues but with no commitment to award the component of the work in which they have assisted in estimating.

#### C. Design Budget/Estimates

1. Budget Estimate (1): Based on Schematic Design Documents, the CMAR will prepare a comprehensive budget estimate with complete price breakdown and detailed listing of Proposals and assumptions. The budget will be presented in the format approved by the Authority that reflects the various sources of funds applicable to various aspects of the Project. The CMAR will then participate in a reconciliation meeting with the Program Manager, Architect and the Architect's Cost Consultant to arrive at a consensus budget estimate for approval by the City.
2. Budget Estimate (2): Based on completed Design Development Documents, the CMAR will prepare a comprehensive budget estimate using a detailed quantity survey method. The budget estimate should clarify most of the Proposals and assumptions contained in Budget Estimate No. 1. A similar reconciliation exercise will be performed as in Budget Estimate No. 1 for approval by the City.
3. Budget Estimate (3): Upon 65% completion of the Construction Documents, the CMAR shall prepare a GMP based on the 65% Construction Documents. The CMAR shall furnish a summary describing any inconsistencies, delays or problem areas that could impact budget parameters and final delivery of the Project. The CMAR shall take into account the phasing of the Project in the GMP. The summary will be submitted with a complete and detailed price breakdown along with further clarifications of any Proposals and assumptions, the CMAR shall participate in a reconciliation meeting with the Program Manager, Architect and Architect's Cost Consultant for approval by the City.
4. Final Budget Estimate: Upon 100% completion of the Construction Documents, the CMAR will prepare a Final Budget Estimate based on the completed documents. If within the budget parameters set by the City, the City may accept the Final Budget Estimate and finalize a contract for construction. The CMAR shall specify within each budget estimate the fee for overhead and profit.
5. Value Analysis: Concurrent with the submission of each Budget Estimate, the CMAR shall provide value analysis options with associated costs. The CMAR shall review the options with the Project Team and incorporate selected options into the Budget Estimate.

The CMAR recognizes that the estimates noted above are the minimum number that will be required to fulfill the CMAR's role as a member of the Project Team during the pre-construction process. The CMAR will be expected to provide cost comparisons for various building components and systems that may impact the project budget so that the most appropriate choices will be incorporated in the design of the project. The CMAR shall also provide estimates to the Project Team of all construction related permitting costs. Budget Estimates and GMP Documents shall include estimates of all applicable tax savings for which the Owner is eligible.

#### D. Equipment Review and Coordination

1. The CMAR, as a part of the Project Team, shall assist in the reviewing and budgeting of Owner Furnished Equipment and Furnishings, material and installation costs, and other exposures that could potentially affect the Budget Estimate to ensure that all costs are accounted for.
2. During the pre-construction phase of the Project, the CMAR shall identify, bid and place purchase orders for long lead time equipment as required.

#### E. LEED Considerations

1. The CMAR, as a part of the Project Team, will work to facilitate the incorporation of sustainable practices, building systems and components into the design and construction process, making suggestions and providing cost analysis of LEED options when requested. The CMAR is required to have LEED accredited personnel engaged in the Pre-Construction and Design Phases of the Project to ensure that the Contractor's responsibilities are executed in accordance with LEED considerations.

#### F. Cash Flow Analysis

1. Concurrent with the submission of each Budget Estimate and the Master Construction Phase Schedule, the CMAR shall submit a cash flow analysis for the overall construction duration of the Project showing projected monthly billings for completed work in place and the accumulated billings to date along with the percentages of completion. The CMAR will be expected to maintain the cash flow analysis through the duration of the Project.

#### G. Subcontractor/Vendor Solicitation

1. The CMAR will promote the interest of local and regional bidders and develop a master list of Vendors and Subcontractors that have shown interest in submitting bid packages for the Project. The list should include only companies that are qualified.

2. The Goal for participation by Disadvantaged Business Enterprise (DBE) program is established by the City. The CMAR shall be familiar with the terms and conditions of the Program and shall use its best efforts to comply with the goal. The CMAR shall present a preliminary plan at the outset of the Pre-Construction Phase outlining how it will achieve the goals and will confirm that plan concurrent with the submission of the GMP at the end of the Pre-Construction Phase.
3. The CMAR will be responsible for tracking the participation of local, regional and DBE bidders on a monthly basis and reporting to the City including those used as a part of the General Conditions.

#### H. Construction Staging and Site Management

1. The CMAR will work with the Project Team, including such stakeholders as the City in developing a Site Management Plan detailing the various phases of the work and the staging of construction operations. The plan will include vehicular access to and from the site, construction parking, the location of temporary facilities, the location of hoists, cranes and other equipment, locations of barricades and construction fence and protection of the public during construction.

### **Bidding and Construction Phase**

#### A. Bidding

The CMAR shall:

1. Publish a bid calendar and publish required notices.
2. Manage, facilitate and coordinate the bid phase.
3. Print, assemble and distribute sub-contractor contract document work packages for bidding confirming that all requirements have been met.
4. Receive and hold all insurance certificates, performance and payment bonds, and other required start-up documents.
5. Establish and conduct pre-award meetings and pre-construction meetings.
6. The CMAR may self-perform some level of work, to be determined in accordance with the Contract Agreement, however, the CMAR must evidence a competitive price submitted in advance of other subcontract prices to the satisfaction of the City.

#### B. Site Management



1. The CMAR shall collect and coordinate site-specific safety and security plans from each subcontractor, set up procedures to hold all subcontractors accountable for meeting safety and security requirements in the Project Manual and in their respective Safety and Security Plans.
2. The CMAR shall be responsible for obtaining building permits for the City.

#### C. Construction Management

1. Monitor the work and report any non-compliant items to the Architect and the Project Team. Make recommendations and submit plans of correction to the Architect and Project Team for review and approval. Implement accordingly.

#### D. Schedule

1. CMAR shall be responsible for all schedules and the coordination of all work items contained therein. The CMAR shall update the schedule not less than monthly indicating the projected and scheduled end date, noting all float and showing all progress. At each Owner, Architect, Construction Manager (OAC) Meeting, the CMAR shall provide a six-week near term schedule.
2. The CMAR shall notify the rest of the Project Team within a week of any schedule slips along with a strategy to correct and recover lost time.

#### E. Construction

1. The CMAR shall provide supervision as required to coordinate the work of all contractors/subcontractors with each other and the activities of the CMAR and the rest of the Project Team. The CMAR shall ensure that the construction of the work is in strict accordance with the Construction Documents within the time and price agreed to in the GMP. The CMAR shall award and enter into, as a general contractor, all subcontracts necessary and appropriate to provide all labor and materials for the construction of the Project.
2. The CMAR shall provide project management as required to implement the overall plan and achieve the cost, schedule, quality, safety and security goals of the City.
3. The CMAR shall coordinate with various local, federal and state agencies, as well as utility companies.
4. The CMAR shall facilitate and document all communications to and from subcontractors, the Owner, Program Manager and the Architect. The CMAR shall log all

communications items and shall measure and report the time with which the activities occur.

5. The CMAR shall document all communications and the facts related to claims to the rest of the Project Team.
6. The CMAR shall provide coordination and administration of security on the project on behalf of and in coordination with the City.
7. The CMAR shall create and implement written payment procedures for all subcontractors, which must be approved by the City. They will also be required to provide a Partial Release of Liens from each subcontractor for payment they received in the previous month.
8. The CMAR shall develop and monitor an effective system of cost control, reflecting current cost claims against the budget, and projecting costs to complete on a monthly basis.
9. The CMAR shall receive all submittal items from subcontractors and vendors review them for general conformance with the contract documents and the work plan, and forward to the City. The CMAR shall keep a submittal log and monitor the scheduling of submittals so as to allow adequate time for review by the rest of the Project Team and shall maintain and make available at the Project site updated records of subcontracts, shop drawings, submissions, samples and manuals.
10. The CMAR shall maintain current as-built and record documents at the site.
11. The CMAR shall coordinate the delivery and unpacking of all Owner supplied materials and equipment that is not being received by the subcontractor of the Owner.
12. The CMAR shall coordinate the close-out commissioning process including the training of appropriate Owner personnel in the operation of equipment installed as a part of the Project and the LEED commissioning.
13. The CMAR acknowledges and understands that the Owner will initially engage the CMAR to perform pre-construction services in connection with the Project. The CMAR further acknowledges and agrees that in submitting a Proposal in response to the RFP, the Owner shall not be obligated to engage the CMAR to construction or build the Project and the Owner specifically reserves the right to retain another entity or contractor for the construction phase of the Project.
14. The CMAR shall be responsible for the documentation of all DBE participation in the construction phase in accordance with the policies and requirements of the Owner.
15. The CMAR shall provide a one-year warranty on all material and workmanship.

## **VI. Contract Requirements**

Submitting entities, if selected, must be willing to sign a contract with the City which will include certain provisions, among which are the following:

- 6.1 **Contract Documents.** The contract shall consist of (1) the RFP; (2) the proposal submitted by the contractor to this RFP; and (3) the contract. In the event of a discrepancy between the contract, the RFP and the submitted proposal, the terms that provide the greater benefit to the City and/or impose the greater obligation to the contractor will prevail.
- 6.2 **Administration.** The contract will be administered by the City of Knoxville Office of the Deputy to the Mayor and Chief Operations Officer.
- 6.3 **Invoices.** Invoices for services will be submitted to the City in accordance with the contract terms.
- 6.4 **Independent Contractor.** The relationship of contractor to the City will be that of independent contractor. The contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and subcontractors done during the performance of the contract. All services performed by the contractor shall be provided in an independent contractor capacity and not in the capacity of officers, agents, or employees of the City.
- 6.5 **Assignment.** The contractor shall not assign or transfer any interest in this contract without prior written consent of the City of Knoxville.
- 6.6 **Indemnification and Hold Harmless.** The successful proposer will be required to sign a contract with the City which contains the following indemnification clause. This indemnification clause will not be altered in any way. Failure to agree with this indemnification clause in the contract may result in the City moving to the next responsible responsive proposer.

Contractor shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of Contractor in performance of this Agreement or from Contractor's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

Contractor shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and Contractor shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. Contractor will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Contractor may request. Contractor will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld or

delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

Contractor shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

6.7 Termination. The City may terminate this Agreement at any time, with or without cause, by written notice of termination to the Contractor.

If the City terminates this Agreement, and such termination is not a result of a default by the Contractor, the Contractor shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to the Contractor: the amount due to the Contractor for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which the Contractor would have been entitled to receive if this Agreement had not been terminated.

The City may, by written notice of default to the Contractor, terminate the whole or any part of this Agreement if the Contractor fails to perform any provisions of this Agreement and does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of said notice from the Purchasing Agent specifying such failure. If this Agreement is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those terminated.

6.8 Insurance. When applicable and prior to the commencement of the contract, contractor must, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. Contractor shall furnish the City of Knoxville with properly executed certificates of insurance which shall clearly evidence all insurance required by the City. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better. Such insurance shall be at a minimum the following:

- A. **Commercial General Liability Insurance;** occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than two million dollars each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- (a.) Contain or be endorsed to contain a provision that includes the City and its officials, officers, employees, and volunteers as additional insureds with

respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

- (b.) The specified insurance shall also include and insure Volkert Inc., Tennova, and their respective directors, council members, agents and employees, including, with limits, the Architect and the Engineer and the other named consultants, their officers, agents and employees as additional insured's (with the exception of Worker's Compensation and Professional Liability), against the areas of risk associated with the Services as described in this RFP with respect to Contractor's operations, acts or omissions in the performance of this Agreement, its operations, use and occupancy of the Facility, and other related functions performed by or on behalf of Contractor in, on or about Facility, which the Contractor may be legally liable, whether such operations be by the Contractor, or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose act any of them may be liable.
  - (c.) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.
  - (d.) At the sole discretion of the City, dedicated limits of liability for this specific project may be required.
- B. **Automobile Liability Insurance;** including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
  - C. **Workers' Compensation Insurance.** Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.
  - D. **Builder's Risk Insurance.** Contractor shall procure and shall maintain or shall cause to be procured and maintained Builders' Risk insurance on a replacement

cost basis during the construction of the project. Insurance is to be on an “all risks” basis and shall insure against the perils of fire and extended coverage and physical loss or damage including, but not limited to, theft, vandalism, flood, earthquake, malicious mischief, collapse, temporary building and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for architects’ services and expenses required as a result of such insured loss. Insurance is to cover all property of Contractor (and its subcontractors) and the City at the construction site. Coverage shall cover the completed value of the construction including without limitation, slab on grade, excavations, foundations, caissons, tenant finish work, and retaining walls around the perimeter of the project. Any exclusion of so-called underground damage to pipes, collapse of structure, or damage resulting from explosion or blasting shall be deleted. This coverage shall be issued on a completed value form basis for 100% of the insurable replacement value of the project. Such policy shall provide that any loss thereunder shall be payable to Contractor, the City, and others as their interests may appear and shall also have a replacement cost endorsement. The insurer shall waive all rights of subrogation against the City. Partial occupancy or use shall not commence until the insurance company or companies providing the insurance have consented to such partial occupancy or use by endorsement or otherwise. Contractor shall be responsible for the deductible in the event of a loss.

**E. Other Insurance Requirements.** Contractor shall:

- Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville; P.O. Box 1631; Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.
- Upon the City's request, provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsements(s), proof of such policy wording or endorsement(s) will be required.
- Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

- If Contractor cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Contractor may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.
- Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions may require proof of financial ability as determined by the City.
- Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Contractor for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
- Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis, unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the City. Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.
- Maintain liability coverage that shall include completed operations coverage, and Contractor shall maintain such coverage for a period of 5 years from the date of final acceptance of the project.
- Commercial general liability policies usually automatically insure liability for the risks of explosion, collapse, and damage to underground property. Certain contractors must pay additional premiums to obtain these coverages. If the policy does not cover these risks, it will have exclusions for the X, C, and U perils. When applicable, verification should be provided by Contractor that these exclusions do not apply.
- In some situations, *Contractors' Pollution Liability* will be necessary if there is the possibility of recovery or release of pollutants from a construction project that could

cause injury/loss to a third party. In those situations, refer to the environmental liability section below. A surety bond is usually required to ensure the agreement is followed and to protect the City in the event of Contractor insolvency. A performance bond is also required to protect the City in the event the contractor does not complete the project satisfactorily. Bonds provide the following functions: guarantee the bonded project will be completed; guarantee the laborers, suppliers, and subcontractors will be paid even if Contractor defaults; provide an intermediary, the surety, to whom the City can seek relief.

6.9 Ethical Standards. Attention of all firms is directed to the following provisions contained in the Code of the City of Knoxville: Chapter 24, Article II, Section 24-33 entitled "Debts owed by persons receiving payments other than Salary;" Chapter 2, Article VIII, Division 11. the Contractor hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

A. Section 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore, where to the employee's knowledge there is a financial interest possessed by:

- (1) the employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

B. Section 2-1049. Receipt of Benefits from City Contracts by Council Members, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

C. Section 2-1050. Gratuities and Kickbacks Prohibited.

It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed; or
- (3) A legal duty violated, or to be violated, or which could be violated by such



person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

D. Section 2-1051. Covenant Relating to Contingent Fees.

(a) Representation of Contractor. Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) Intentional Violation Unlawful. The intentional violation of the representation specified in subsection (a) of this section is unlawful.

E. Section 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

6.10 Firms must comply with the President's Executive Order No. 11246 and 11375 which prohibit discrimination in employment regarding race, color, religion, sex or national origin. Firms must also comply with Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

6.11 Firms shall give consideration to the inclusion of minority firms or individuals in this project, and shall advise the city in this proposal of their efforts to do so.

6.12 Firms shall give consideration to the use of environmentally sustainable best practices, and shall advise the city in this submittal of qualifications of their efforts to do so.

6.13 Federal, State, and Local Requirements. Each submitting entity is responsible for full compliance with all laws, rules and regulations which may be applicable.

6.14 Licenses. Before a contract is signed by the City, the submitting entity, if selected, **must** provide the City Purchasing Division with a copy of its valid business license **or** with an affidavit explaining why it is exempt from the business licensure requirements of the city or county in which it is headquartered. If a contract is signed, the contractor's business license shall be kept current throughout the duration of the contract, and the contractor shall inform the City of changes in its business name or location. The contractor must be a licensed professional as required by the state of Tennessee, see T.C.A. Sections 62-2-101 et. seq., for any services in this contract requiring such licensure.

6.15 Funding. The City's performance and obligation to pay under this contract is subject to funding contingent upon an annual appropriation.

6.16 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Tennessee and its conflict of laws provisions. Venue for any action arising between the City and the Contractor from the Agreement shall lie in Knox County, Tennessee.

6.17 Subcontracts to the Agreement. Contractor shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

6.18 Amendments. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of the Agreement.

6.19 Captions. The captions appearing in the Agreement are for convenience only and are not a part of the Agreement; they do not in any way limit or amplify the provisions of the Agreement.

6.20 Severability. If any provision of the Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in the Agreement. Failure to enforce any provision of the Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

6.21 No Benefit for Third Parties. The services to be performed by the Contractor pursuant to the Agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to the Agreement. No such person or entity shall be entitled to rely on the Contractor's performance of its services hereunder, and no right to assert a claim against

the City or the Contractor, its officers, employees, agents, or contractors shall accrue to the Contractor or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety, or any other third party as a result of this Agreement or the performance or non-performance of the Contractor's services hereunder.

6.22 Non-Reliance of Parties. Parties explicitly agree that they have not relied upon any earlier or outside representations other than what has been included in the Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

6.23 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

6.24 EEO/AA. The City of Knoxville is an EE/AA/Title VI/Section 504/ADA/ADEA Employer.

6.25 By submitting a proposal, the submitting entity agrees to all terms and conditions established in this RFP, including its contract requirements.

6.26 Right to Inspect. The City reserves the right to make periodic inspections of the manner and means the service is performed or the goods are supplied.

## **VII. Instructions to Submitting Entities**

All submissions of proposals shall comply with the following instructions. These instructions ensure that (1) submissions contain the information and documents required by the City RFP and (2) the submissions have a degree of uniformity to facilitate evaluation.

It is the intention of the City to execute a contract with one prime or multiple firms (joint venture), hereinafter referred to as "Submitting Firm". The Submitting Firm will be held solely responsible for the execution of the entire project. It is expected that the Submitting Firm may desire or need the services of sub consultants to undertake various elements of the project and to satisfy DBE requirements. In the events that Sub Consultants are anticipated, the RFP submittal shall identify the proposed Sub Consultants and the specific work elements each will be responsible for completing.

Should the proposing entity be a joint venture of any kind, the following information shall be submitted for both firms and should clearly identify the contractual arrangement between the joint venture companies and the roles and responsibilities of each.

All submittals become the property of the City and the City assumes no liability for disclosure or use of information or materials submitted.

The company or joint venture selected by the City to perform these services will enter a non-exclusive agreement with the City, and the City shall have the right to contract for all or any portion of the projects with the selected company or joint venture. The form of agreement between the City and Construction Manager at Risk shall be provided to the shortlisted firms, along with the General Conditions, and any Supplementary Conditions as determined by the Owner prior to oral presentations. The Scope of Services contained in this RFP, although not inclusive, shall become a part of the proposed Agreement between the Owner and Construction Manager.

#### 7.1 General

Submission forms and RFP documentation may be obtained on or after April 22, 2019 at no charge from:

City of Knoxville Purchasing Division  
City/County Building  
400 Main Street, Room 667  
Knoxville, Tennessee 37902

between 8:30 a.m. and 4:30 p.m. (Eastern Time), Monday through Friday or by calling 865/215-2070. Forms and RFP information are also available on the City web site at [www.knoxvilletn.gov/purchasing](http://www.knoxvilletn.gov/purchasing) where it can be read or printed using Adobe Acrobat Reader software.

#### 7.2 Submission Information

Proposals shall include seven (7) hard copies (one original and six duplicates—**mark the original as such**) and one electronic copy of the proposal (.pdf format on CD or USB drive only—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **Electronic submissions must be included with the sealed submissions; do not email your submission.**

Proposals should contain not more than 20 single pages (40 pages both sides including photographs) excluding tabs, and with each section of the submittal tabbed as follows:  
Submittal Tabs:

- A. Corporate Information/Responsive to Proposals
- B. Project Understanding

- C. Relevant Experience
- D. Staffing Plan / Proposals
- E. DBE Participation Plan
- F. Location of Firms
- G. References
- H. Pricing Delivery Proposals Form

**IMPORTANT NOTE: A minimum of one of the submitted proposals must bear an original signature, signed in ink (duplicated signatures substituted for original ink signatures may result in rejection of the proposals). This document is the official, original submission; the required copies may have copied signatures.** The signature must be entered above the typed or printed name and title of the signer. All proposals must be signed by an officer of the company authorized to bind the firm to a contract.

Proposals will be received until 11:00:00 a.m. (Eastern Time) on May 17, 2019. Each proposal must be submitted in a sealed envelope addressed to:

City of Knoxville Purchasing Division  
City/County Building  
400 Main Street, Room 667  
Knoxville, TN 37902

**IMPORTANT NOTE: Each mailing envelope or carton containing a proposal or multiple copies of the proposal must be sealed and plainly marked on the outside “CMAR for New Public Safety Complex.”** Proposers are reminded that the Purchasing Division receives many bids and proposals for any number of solicitations; **unlabeled submissions are extremely difficult to match to their appropriate solicitations and therefore may be rejected.**

Any proposals received after the time and date on the cover sheet will not be considered. It shall be the sole responsibility of the submitting entity to have the proposal delivered to the City of Knoxville Purchasing Division on or before that date.

Late proposals will not be considered. Proposals that arrive late due to the fault of United States Postal Service, United Parcel Service, DHL, FEDEX, any delivery/courier service, or any other carrier of any sort are still considered late and shall not be accepted by the City. Such proposals shall remain unopened and will be returned to the submitting entity upon request.

### 7.3 Format

The City is committed to reducing waste. Submissions of qualifications must be typed on 8.5 x 11 inch wide white paper, printed on both sides. DO NOT BIND the document; instead, staple or binder clip the submission together and place in a sealed envelope (see Paragraph 7.2). Pages must be consecutively numbered. A table of contents must be included in the proposal immediately after the title page, and each of the following numbered sections must be tabbed.

Proposals shall be structured as follows. Numbered items listed below should have a numbered tab page:

1. Title Page
2. Table of Contents
3. Submission Forms: (NOTE: All required submission forms may be found in this solicitation document)
  - A. Form S-1 Pricing Delivery Proposal
  - B. Non-Collusion Affidavit
  - C. No Contact/No Advocacy Affidavit
  - D. Iran Divestment Act Certification of Noninclusion
  - E. Diversity Business Enterprise Program
4. Body of Proposal to include the following:

A contract will be awarded based upon a series of responses to the following tabbed sections of the RFP in addition to a negotiated fee.

A. Corporate Information//Responsive to Proposals

1. Brief history of the company, including present ownership and key executives. (Please note if the company has been debarred for any reason thus preventing the Owner from utilizing any federal or state funding for the Project).
2. Evidence of the company's financial capacity to provide a performance bond of up to \$15 million.
3. Location of corporate headquarters and the location of the office that will handle this project.
4. A company organizational chart.
5. A description of the company's quality control and safety programs and their bearing on this Project. Include worker's compensation Experience Modification Rate for the last 5 years.
6. A description of the company's in-house pre-construction services capabilities.
7. A brief description of project disputes and/or claims in the last 5 years reaching a formal dispute resolution stage noting the parties and the monetary amounts involved.
8. All information/tabbed sections included in package.

B. Project Understanding

1. Describe the company's approach to pre-construction services, including its capabilities in estimating, scheduling and project management. Describe the company's approach to pre-construction and construction phase services in the context of the scope outlined in this RFP. Describe how the company stays abreast of current technologies, innovative practices and current market pricing structure. Describe how the company will provide effective estimating for key subcontractor areas of responsibility such as HVAC, electrical and plumbing components during the budgeting phase.

C. Relevant Experience

1. The company's current and average construction volume during the past 5 years.
2. The experience on Municipal projects of similar size and complexity during the last 5 years and the project locations.
3. Provide a description of 3-5 current or past projects of similar size and complexity where the company served either as CM at risk, CM as agent, or the general contractor and the following information for each:
  - Owner name, address and telephone number of contact person
  - Completion date
  - Brief description of the project and major elements and special challenges
  - Project size in square feet – separate new construction from renovation
  - Photographs of project
  - Contract type
  - Contract amount: budget, actual and change order value
  - Construction value
  - Note if company supplied pre-construction services

Emphasis will also be placed on the following items:

Projects that

- a. are valued in excess of \$35.5 million,
  - b. involved both renovation and new construction,
  - c. must be kept in operation during construction,
  - d. required DBE facilitation,
  - e. the company has provided pre-construction and construction phase services under a GMP type agreement
4. The company's experience in building LEED certified buildings.
  5. Summarize the company's experience in using and mentoring disadvantaged businesses in projects of similar size and scope and provide recommendations for attaining the City's DBE goals. Provide written assurances of the company's ability and intention to use its best efforts to assist the City in meeting the DBE participation goals stated in the Diversity Business Enterprise Program form of this RFP, for both pre-construction and construction phases.
  6. The CMAR will be asked to provide a Contractor Controlled Insurance Program (CCIP) for the Project. Note your experience with CCIP programs and your comments as to its value on this Project. Describe additional coverages that will be provided by your company and subcontractors covering risks not covered by the CCIP.

#### D. Staffing Plan / Proposals of Propose Team

1. Provide a chart identifying key individuals on the pre-construction and construction phase team(s) and their respective responsibilities. Indicate who will be on site and which will not.

2. Submit current resumes of the proposed team members including their experience (one page) and specifically identify their experience on projects of similar size and complexity.
3. Provide the current availability of proposed team members in relation to other assigned projects.

#### E. References

A list of references for the Submitting Firm and any sub consultants involved in the project for similar work performed at other Municipal Facilities including Comparable Police, Fire HQ , Courts and/or locations.

### 7.4 Evaluation of Proposals

All qualified submissions received by the deadline will be analyzed by the Evaluation Committee according to the criteria outlined in these specifications. Failure to comply with the provisions of the RFP may cause any proposal to be ineligible for evaluation. Each submittal of proposals will be initially analyzed and judged according to the evaluation criteria below. The maximum score is 100 points.

The City reserves full discretion to determine the capability of proposing entities. Proposers, if asked, will provide, in a timely manner, any and all information that the City deems necessary to make such a decision. In addition to materials provided in the written responses to this RFP, the Committee may request additional material, information, references, a site visit, or a live test demonstration from the submitting entity or others.

The Evaluation Committee may or may not decide to interview any or all proposing entities at a time and date determined by the City in order to address questions and more fully ascertain how the solution to this project satisfies the evaluation criteria. Firms and/or teams responding to this Request for Proposals shall be available for interviews with the Evaluation Committee. Discussions may be conducted with responsible submitting entities for purposes of clarification to assure full understanding of and conformance to the RFP requirements. Selection shall be based on the firms' qualifications applicable to the scope and nature of the services to be performed per this request for proposals. Determination of firms' qualifications shall be based on their written responses to this Request for Proposals and information presented to the Evaluation Committee during oral interviews, if any.

In addition to materials provided in the written responses to this Request for Proposals, the Committee may request additional material, information, or references from the submitting entity or others.

Provided it is in the best interest of the City of Knoxville, the firm or team determined to be the most responsive to the City of Knoxville, taking into consideration the evaluation factors set forth in this Request for Proposals, will be selected to begin contract negotiations. The firm or team selected will be notified at the earliest practical date and invited to submit more comprehensive information if necessary. If no satisfactory agreement can be reached with the



“most responsive firm,” the City may elect to negotiate with the next best and most responsive firm or team.

### **VIII. Evaluation Criteria**

An evaluation team, composed of representatives of the City, will evaluate proposals on a variety of quantitative and qualitative criteria. Upon receipt of proposals, the City will review to determine whether the proposal is acceptable or non-acceptable based on the criteria outlined below.

The criteria and the associated weights upon which the evaluation of the proposals will be based include, but are not limited to, the following:

- 1. Qualifications/Experience of Firm – 40 points:** Experience of firm and team having performed within the past five years similar type projects for public entities of similar size, complexity, and timeline
- 2. Qualifications/Experience/Availability of Key Personnel – 30 points:** Proposal shall include professional experience and qualifications of the key personnel who will be involved in overseeing delivery, setup, monitoring, and removal of equipment.
- 3. Pricing and Delivery Proposal – 30 points:** Quoted pricing for entire project and total construction duration

## **Submission Forms**

**CITY OF KNOXVILLE**  
**REQUEST FOR PROPOSALS**  
**Professional Construction Manager at Risk for a**  
**New Public Safety Complex**  
**Submission Form S-1 Pricing Delivery Proposal**

**Proposals to be Received by 11:00:00 a.m., Eastern Time; May 17, 2019; in Room 667-674,  
City/County Building; Knoxville, Tennessee.**

**IMPORTANT:** Proposals shall include seven (7) hard copies (one original and six duplicates—**mark the original as such**) and one electronic copy of the proposal (.pdf format on CD or USB drive only—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **Electronic submissions must be included with the sealed submissions; do not email your submission.**

**Please complete the following:**

Having carefully examined all the requirements of this RFP, and any attachments, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

**Establishment of the Construction Manager's Budget Limitation:**

The Owner has established a Construction Manager's Budget Limitation (CMBL) amount of \$35,500,000 which includes the Pre-Construction Phase Fee and the Construction Services Guaranteed Maximum Price Proposals.

**Respondent's Pre-Construction Phase Fee:** The Respondent shall identify a Pre-Construction Phase Fee.

Respondent's Pre-Construction Phase Fee \$ \_\_\_\_\_

**Establishment of the Construction Cost Limitation:** Using the CMBL and the Respondent's Pre-Construction Phase Fee identified above, the Respondent shall identify the Construction Cost Limitation (CCL),

Construction Manager's Budget Limitation (CMBL) \$  
35,500,000.00

Owner's Construction Contingency (less) \$ 2,869,600.00

Respondent's Pre-Construction Phase Fee (*as identified above*) (less) \$ \_\_\_\_\_

Respondent's Construction Cost Limitation (*equals*) \$ \_\_\_\_\_

**Respondent's Construction Phase Fee:** Using the CCL identified above, the Respondent shall identify a Construction Phase Fee percentage.

Respondent's Construction Phase Fee Percentage \_\_\_\_\_ %

Respondent's Estimated Construction Phase Fee Amount \$ \_\_\_\_\_  
(percentage times the CCL above)

Respondent's General Conditions Percentage \_\_\_\_\_ %

Respondent's Estimated General Conditions \$ \_\_\_\_\_  
(percentage times the CCL above)

Total Construction Duration (Notice to Proceed to Substantial Completion)  
\_\_\_\_\_ months

Respectfully Submitted and Certified By:

\_\_\_\_\_  
(Respondent's Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Date)

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**DUNS #:** \_\_\_\_\_

**Note:** Failure to use these response sheets may disqualify your submission.

## NON-COLLUSION AFFIDAVIT

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

- (1) He/She is the \_\_\_\_\_ of \_\_\_\_\_, the firm that has submitted the attached Proposal;
- (2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit collusive or sham proposal in connection with the contract or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such contract or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Knoxville or any person interested in the proposed contract or agreement; and
- (5) The proposal of service outlined in the Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties including this affiant.

(Signed): \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires \_\_\_\_\_

No Contact/No Advocacy Affidavit

State of \_\_\_\_\_

County of \_\_\_\_\_

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/She is the owner, partner, officer, representative, or agent of \_\_\_\_\_  
\_\_\_\_\_, the Proposer that has submitted the attached Proposal;

(2) The Proposer \_\_\_\_\_ swears or affirms that he/she will abide by the following "No Contact" and "No Advocacy" clauses:

- a) **NO CONTACT POLICY:** After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this proposal is strictly prohibited, unless such contact is made with the Assistant Purchasing Agent (Penny Owens). Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction.
- b) **NO ADVOCATING POLICY:** To ensure the integrity of the review and evaluation process, companies and/or individuals submitting proposals for any part of this project, as well as those persons and/or companies representing such proposers, may not lobby or advocate to the City of Knoxville staff including, but not limited to, members of City Council, Office of the Mayor, Office of the Deputy Mayor, or any other City staff.

**Any company and/or individual who does not comply with the above stated "No Contact" and "No Advocating" policies may be subject to having their proposal rejected from consideration.**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

My commission expires: \_\_\_\_\_

## IRAN DIVESTMENT ACT

### Certification of Noninclusion

**NOTICE:** Pursuant to the Iran Divestment Act, Tenn. Code Ann. § 12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the state of Tennessee; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. A list of entities ineligible to contract in the State of Tennessee Department of General Services or any political subdivision of the State may be found here:

[https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List of persons pursuant to Tenn. Code Ann. 12-12-106 Iran Divestment Act updated 7.7.17.pdf](https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/cpo-library/public-information-library/List%20of%20persons%20pursuant%20to%20Tenn.%20Code%20Ann.%2012-12-106%20Iran%20Divestment%20Act%20updated%207.7.17.pdf)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106.

Vendor Name (Printed)	Address
By (Authorized Signature)	Date Executed
Printed Name and Title of Person Signing	

### NOTARY PUBLIC:

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

My commission expires: \_\_\_\_\_

# DIVERSITY BUSINESS ENTERPRISE (DBE) PROGRAM

The City of Knoxville strongly encourages prime contractors to employ diverse businesses in the fulfillment of contracts/projects for the City of Knoxville.

The City of Knoxville's Fiscal Year 2018 goal is to conduct 4.03% of its business with minority-owned businesses, 16.30% of its business with woman-owned businesses, and 39.77% with small businesses.

While the City cannot engage (pursuant to state law) in preferential bidding practices, the City does **strongly encourage** prime contractors to seek out and hire diverse businesses in order to help the City meet its goals as stated above. As such, the City encourages prime contractors to seek out and consider competitive sub-bids and quotations from diverse businesses.

For DBE tracking purposes, the City requests that prime contractors who are bidding, proposing, or submitting statements of qualifications record whether or not they plan to employ DBE's as sub-contractors or consultants. With that in mind, please fill out, sign and submit (with your bid/proposal) the following sub-contractor/ consultant statement.

## CITY OF KNOXVILLE DIVERSITY BUSINESS DEFINITIONS

Diversity Business Enterprise (DBE's) are minority-owned (MOB), women-owned (WOB), service-disabled veteran-owned (SDVO), and small businesses (SB), who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background. These persons must own at least 51% of the entity and operate or control the business on a daily basis.

Minority: A person who is a citizen or lawful admitted permanent resident of the United States and who is a member of one (1) of the following groups:

- a. African American, persons having origins in any of the Black racial groups of Africa;
- b. Hispanic American, persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
- c. Native American, persons who have origin in any of the original peoples of North America ;
- d. Asian American, person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.



Minority-owned business (MOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals.

Woman-owned business (WOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women.

Service Disabled Veteran-owned business (SDOV) is a continuing, independent, for profit business that performs a commercially useful function, owned by any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service connected. Meaning such disability was incurred or aggravated in the line of duty in the active military, naval or air service, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service disabled veteran.

Small Business (SB) is a continuing, independent, for profit business which performs a commercially useful function and has total gross receipts of not more than ten million dollars (\$10,000,000) average over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

**Subcontractor/Consultant Statement**  
(TO BE SUBMITTED IN THE BID/PROPOSAL ENVELOPE)

We \_\_\_\_\_ do certify that on the  
(Bidder/Proposer Company Name)  
\_\_\_\_\_  
(Project Name)

\$ \_\_\_\_\_  
(Amount of Bid)

**Please select one:**

☐ **Option A: Intent to subcontract using Diverse Businesses**

A Diversity business will be employed as subcontractor(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay is:

\$ \_\_\_\_\_  
Estimated Amount of Subcontracted Service

Diversity Business Enterprise Utilization			
Description of Work/Project	Amount	Diverse Classification (MOB, WOB, SB, SDOV)	Name of Diverse Business

☐ **Option B: Intent to perform work “without” using Diverse Businesses**

We hereby certify that it is our intent to perform 100 % of the work required for the contract, work will be completed without subcontracting, or we plan to subcontract with non-Diverse companies.

DATE: \_\_\_\_\_ COMPANY NAME: \_\_\_\_\_

SUBMITTED BY: \_\_\_\_\_ TITLE: \_\_\_\_\_  
(Authorized Representative)

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP CODE: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_

## EXHIBIT A: Site Plan





*Metro Nashville Police Headquarters and Family Justice Center*

# City of Knoxville

## New Public Safety Complex

Copy

**Messer**  
WeAreBuilding.

City of Knoxville  
Office of the Purchasing Division  
City/County Building  
Room 667-674  
400 Main Street  
Knoxville, Tennessee 37902  
May 22, 2019



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## Submission Forms

- A. Form S-1 Pricing Delivery Proposal
- B. Non-Collusion Affidavit
- C. No Contact/No Advocacy Affidavit
- D. Iran Divestment Act Certification of Noninclusion
- E. Diversity Business Enterprise Program on Similar Projects
- A. Corporate Information//Responsive to Proposals
- B. Project Understanding
- C. Relevant Experience
- D. Staffing Plan / Proposals of Proposed Team
- E. References

**CITY OF KNOXVILLE**  
**REQUEST FOR PROPOSALS**  
**Professional Construction Manager at Risk for a**  
**New Public Safety Complex**  
**Submission Form S-1 Pricing Delivery Proposal**

**Proposals to be Received by 11:00:00 a.m., Eastern Time; May 17, 2019; in Room 667-674,  
City/County Building; Knoxville, Tennessee.**

**IMPORTANT:** Proposals shall include seven (7) hard copies (one original and six duplicates—**mark the original as such**) and one electronic copy of the proposal (.pdf format on CD or USB drive only—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **Electronic submissions must be included with the sealed submissions; do not email your submission.**

**Please complete the following:**

Having carefully examined all the requirements of this RFP, and any attachments, the undersigned proposes to furnish Construction Manager-At-Risk services as required for this Project on the following terms:

**Establishment of the Construction Manager's Budget Limitation:**

The Owner has established a Construction Manager's Budget Limitation (CMBL) amount of \$35,500,000 which includes the Pre-Construction Phase Fee and the Construction Services Guaranteed Maximum Price Proposals.

**Respondent's Pre-Construction Phase Fee:** The Respondent shall identify a Pre-Construction Phase Fee.

Respondent's Pre-Construction Phase Fee **\$ 98,000**

**Establishment of the Construction Cost Limitation:** Using the CMBL and the Respondent's Pre-Construction Phase Fee identified above, the Respondent shall identify the Construction Cost Limitation (CCL),

Construction Manager's Budget Limitation (CMBL)	\$
<u>35,500,000.00</u>	
Owner's Construction Contingency	(less) \$ <u>2,869,600.00</u>
Respondent's Pre-Construction Phase Fee (as identified above)	(less) \$ <u>98,000</u>
Respondent's Construction Cost Limitation	(equals) \$ <u>32,532,400</u>

**Respondent's Construction Phase Fee:** Using the CCL identified above, the Respondent shall identify a Construction Phase Fee percentage.

Respondent's Construction Phase Fee Percentage 2.10 %

Respondent's Estimated Construction Phase Fee Amount \$ 683,180  
(percentage times the CCL above)

Respondent's General Conditions Percentage 4.63 %

Respondent's Estimated General Conditions \$ 1,505,089  
(percentage times the CCL above)

Total Construction Duration (Notice to Proceed to Substantial Completion)  
18 months

Respectfully Submitted and Certified By:

John Blum  
(Respondent's Printed Name)

VICE PRESIDENT, KNOXVILLE  
(Title)

  
(Authorized Signature)

5/20/19  
(Date)

Address: MESSER CONSTRUCTION 120 PERIMETER PARK RD KNOXVILLE, TN 37922

Telephone Number: 865 - 769 - 3944

Fax Number: 865 - 531 - 8961

Contact Person: John Blum

Email Address: jblum@MESSER.COM

DUNS #: 04-160-3499

**Note: Failure to use these response sheets may disqualify your submission.**

**Safety Complex CMAR - General Conditions Cost Detail/Proposal**

<u>Item Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Cost/Month</u>	<u>Months</u>	<u>Lump Sum Cost</u>
Project Director (Including Labor Burden)	18	Month	\$ -	\$ -	18	\$ -
Project Manager (Including Labor Burden)	18	Month	\$ 4,580.60	\$ 4,580.60	18	\$ 82,450.73
Assistant Project Manager (Including Labor Burden)	18	Month	\$ 18,056.01	\$ 18,056.01	18	\$ 325,008.16
Superintendent (Including Labor Burden)	15.1	Month	\$ 13,294.36	\$ 13,294.36	15.1	\$ 200,744.80
Assistant Superintendent (Including Labor Burden)	16.2	Month	\$ 1,326.51	\$ 1,326.51	16.2	\$ 21,489.42
Field Supervisor (Including Labor Burden)	12.2	Month	\$ 13,301.32	\$ 13,301.32	12.2	\$ 162,276.09
Field Engineer (Including Labor Burden)	18	Month	\$ 11,232.52	\$ 11,232.52	18	\$ 202,185.31
Job Clerk (Including Labor Burden)	18	Month	\$ 2,064.01	\$ 2,064.01	18	\$ 37,152.10
Scheduling	0	Month	\$ -	\$ -	18	\$ -
Automobile Allowance	18	Month	\$ 200.00	\$ 200.00	18	\$ 3,600.00
Automobile Fuel	0	Month	\$ -	\$ -	18	\$ -
Office Trailers	6	Month	\$ 1,200.00	\$ 1,200.00	18	\$ 21,600.00
Office Furniture & Equipment	18	Month	\$ 850.00	\$ 850.00	18	\$ 15,300.00
Computers & Software	18	Month	\$ 700.00	\$ 700.00	18	\$ 12,600.00
Mobile Phones	0	Month	\$ -	\$ -	18	\$ -
Office Supplies	18	Month	\$ 250.00	\$ 250.00	18	\$ 4,500.00
Postage & Shipping	18	Month	\$ 25.00	\$ 25.00	18	\$ 450.00
Printing Costs	18	Month	\$ 277.78	\$ 277.78	18	\$ 5,000.00
Photographs	18	Month	\$ 111.11	\$ 111.11	18	\$ 2,000.00
Drinking Water & Ice	0	Month	\$ -	\$ -	18	\$ -
Temporary Office Telephone & Internet Service	18	Month	\$ 200.00	\$ 200.00	18	\$ 3,600.00
Temporary Office Power	6	Month	\$ 700.00	\$ 700.00	18	\$ 12,600.00
Temporary Office Water	18	Month	\$ 75.00	\$ 75.00	18	\$ 1,350.00
Temporary Office Holding Tanks/Sewer	0	Month	\$ -	\$ -	18	\$ -
Temporary Construction Items Other	0	Month	\$ -	\$ -	18	\$ -
Portable Construction Toilets	18	Month	\$ 340.00	\$ 340.00	18	\$ 6,120.00
Construction Dumpsters (Excluding Demolition Dumpsters)	0	Month	\$ -	\$ -	18	\$ -
Construction Fence	18	Month	\$ 833.33	\$ 833.33	18	\$ 15,000.00
Safety Measures & Equipment	18	Month	\$ 550.00	\$ 550.00	18	\$ 9,900.00
Site Security	18	Month	\$ 400.00	\$ 400.00	18	\$ 7,200.00
Parking Fees	0	Month	\$ -	\$ -	18	\$ -
Drug Testing	18	Month	\$ 27.78	\$ 27.78	18	\$ 500.00
First Aid	0	Month	\$ -	\$ -	18	\$ -
Storage Trailers	0	Month	\$ -	\$ -	18	\$ -
Small Tools/Expendables	18	Month	\$ 50.00	\$ 50.00	18	\$ 900.00
Layout Instruments & Equipment	0	Month	\$ -	\$ -	18	\$ -
Project Signage	1	LS	\$ 7,500.00	NA	NA	\$ 7,500.00
Business License	1	LS	\$ -	NA	NA	\$ -
Insurance (Including GL, Auto, Workers Comp, & Bldrs Risk)	1	LS	\$ 145,000.00	NA	NA	\$ 145,000.00
P&P Bonds	1	LS	\$ 192,062.50	NA	NA	\$ 192,062.50
Permits (TBD)	1	LS	TBD	TBD	TBD	TBD
Temporary Construction Utilities (TBD)	1	LS	TBD	TBD	TBD	TBD
Permanent Utilities (TBD)	1	LS	TBD	TBD	TBD	TBD
Gross Receipt Tax	1	LS	\$ 7,000.00	NA	NA	\$ 7,000.00

**Total General Conditions**

**\$ 1,505,089.11**

**Highlighted Cells To Be Completed By Respondent**



## NON-COLLUSION AFFIDAVIT

State of TENNESSEE

County of KNOX

John Blum, being first duly sworn, deposes and says that:

- (1) He/She is the VICE PRESIDENT of MESSER CONSTRUCTION, the firm that has submitted the attached Proposal;
- (2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit collusive or sham proposal in connection with the contract or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such contract or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Knoxville or any person interested in the proposed contract or agreement; and
- (5) The proposal of service outlined in the Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties including this affiant.

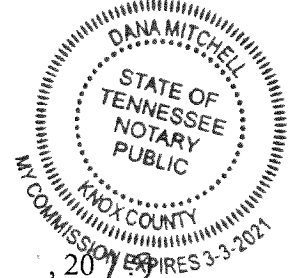
(Signed): [Signature]

Title: VICE PRESIDENT, KNOXVILLE

Subscribed and sworn to before me this 15<sup>th</sup> day of May, 2019

[Signature]  
NOTARY PUBLIC

My Commission expires \_\_\_\_\_



No Contact/No Advocacy Affidavit

State of TENNESSEE

County of KNOX

John Blum, being first duly sworn, deposes and says that:

(1) He/She is the owner, partner, officer, representative, or agent of MESSER  
CONSTRUCTION, the Proposer that has submitted the attached Proposal;

(2) The Proposer MESSER CONSTRUCTION swears or affirms that he/she will abide by the following "No Contact" and "No Advocacy" clauses:

- a) **NO CONTACT POLICY:** After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this proposal is strictly prohibited, unless such contact is made with the Assistant Purchasing Agent (Penny Owens). Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction.
- b) **NO ADVOCATING POLICY:** To ensure the integrity of the review and evaluation process, companies and/or individuals submitting proposals for any part of this project, as well as those persons and/or companies representing such proposers, may not lobby or advocate to the City of Knoxville staff including, but not limited to, members of City Council, Office of the Mayor, Office of the Deputy Mayor, or any other City staff.

**Any company and/or individual who does not comply with the above stated "No Contact" and "No Advocating" policies may be subject to having their proposal rejected from consideration.**

Signed: \_\_\_\_\_

Title: VICE PRESIDENT, KNOXVILLE



Subscribed and sworn to before me this 15<sup>th</sup> day of May, 2019.

My commission expires: \_\_\_\_\_


# IRAN DIVESTMENT ACT

## Certification of Noninclusion

**NOTICE:** Pursuant to the Iran Divestment Act, Tenn. Code Ann. § 12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the state of Tennessee; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. A list of entities ineligible to contract in the State of Tennessee Department of General Services or any political subdivision of the State may be found here:

[https://www.tn.gov/content/dam/tn/general-services/documents/cpo/cpo-library/public-information-library/List\\_of\\_persons\\_pursuant\\_to\\_Tenn.\\_Code\\_Ann.\\_12-12-106\\_Iran\\_Divestment\\_Act\\_updated\\_7.7.17.pdf](https://www.tn.gov/content/dam/tn/general-services/documents/cpo/cpo-library/public-information-library/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_7.7.17.pdf)

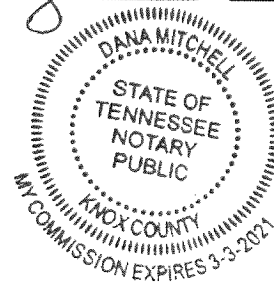
By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106.

Vendor Name (Printed) <b>MESSER CONSTRUCTION</b>	Address <b>120 PERIMETER PARK RD KNOXVILLE, TN 37922</b>
By (Authorized Signature) 	Date Executed <b>5/14/2019</b>
Printed Name and Title of Person Signing <b>ERIC SEAY BUSINESS DEVELOPMENT MANAGER</b>	

### NOTARY PUBLIC:

Subscribed and sworn to before me this 15<sup>th</sup> day of May, 2019.

My commission expires: \_\_\_\_\_



**Subcontractor/Consultant Statement**  
(TO BE SUBMITTED IN THE BID/PROPOSAL ENVELOPE)

We Messer Construction Co. do certify that on the  
(Bidder/Proposer Company Name)  
City of Knoxville New Public Safety Complex  
(Project Name)  
\$ \$32,532,400 (CCL)  
(Amount of Bid)

**Please select one:**

☒ **Option A: Intent to subcontract using Diverse Businesses**

A Diversity business will be employed as subcontractor(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay is:

\$ \$14,000,000  
Estimated Amount of Subcontracted Service

Diversity Business Enterprise Utilization			
Description of Work/Project	Amount	Diverse Classification (MOB, WOB, SB, SDOV)	Name of Diverse Business
TBD	\$1,300,000	MOB	TBD
TBD	\$3,500,000	WOB	TBD
TBD	13,000,000	SBE	TBD

☐ **Option B: Intent to perform work "without" using Diverse Businesses**

We hereby certify that it is our intent to perform 100 % of the work required for the contract, work will be completed without subcontracting, or we plan to subcontract with non-Diverse companies.

DATE: 5/20/19 COMPANY NAME: MESSER CONSTRUCTION  
SUBMITTED BY: [Signature] TITLE: VICE PRESIDENT, KNOXVILLE  
(Authorized Representative)  
ADDRESS: 120 PERIMETER PARK RD  
CITY/STATE/ZIP CODE: KNOXVILLE, TN 37922  
TELEPHONE NO: 865-769-3944

## **ADDENDUM NO. 1**

**Date:** May 6, 2019

**To:** All Proposers

**From:** Penny Owens, Assistant Purchasing Agent, City of Knoxville

**Subject:** Addendum No. 1 – Professional Construction Manager at Risk for a New Public Safety Complex

**RFPs to be Opened:** May 17, 2019\*\*\* (See Below) at 11:00:00 am (Eastern Time)

This addendum is being published to address the following items regarding the above referenced Invitation to Bid. The addendum becomes a part of the Contract Document and modifies the original specifications as noted.

**ITEM #1: Deletion of mandatory status for pre-proposal meeting.** The last paragraph of "Section II. RFP Time Line" is hereby deleted and replaced with the following:

**NOTE:** A Pre-Proposal Conference will be held on Tuesday, May 7, 2019, at 10:00 a.m. Eastern time in the City of Knoxville Finance Conference Room, room 662 on the 6<sup>th</sup> Floor of the City County Building, 400 Main Street, Knoxville, TN 37902. **Attendance at the Pre-Proposal Conference is highly recommended for all prospective submitting parties and/or their representatives.** A review of the RFP is highly encouraged prior to the conference. A site visit to the Tennova Campus in North Knoxville will immediately follow the meeting.

**ITEM #2: Postponement of Proposal Deadline.** The deadline for Proposals is hereby extended to May 22, 2019 at 11:00:00 a.m. (Eastern Time)

**ITEM #3: Postponement of Questions Deadline.** The deadline for questions to be submitted in writing to the Purchasing Division is hereby extended to Close of Business on May 15, 2019.

**ITEM #4: Correction to Availability of RFP.** The RFP Time Line in Section II is hereby revised to indicate the Availability of the RFP as April 29, 2019.

**END OF ADDENDUM NO. 1**

## **ADDENDUM NO. 2**

**DATE:** May 15, 2019  
**TO:** All Potential Proposers  
**FROM:** Penny Owens, Assistant Purchasing Agent  
**SUBJECT:** Addendum No. 2 – Professional Construction Manager at Risk for a New Public Safety Complex

**RFP DUE DATE:** May 22, 2019, 11:00:00 A.M. (Eastern Time)

This addendum is being published to address the following questions submitted by potential proposers. The addendum becomes a part of the Contract Document and modifies the original specifications as noted.

**Question #1:** Is the former ambulatory center part of the project?

Response: No.

**Question #2:** When will the City take possession of the site?

Response: Based on the drafted Purchase and Sale agreement, it is anticipated the City will take possession by the end of 2019. A copy of the drafted Purchase and Sale agreement is attached.

**Question #3:** What security services will be provided?

Response: Upon the City taking possession of the site, the Construction Manager at Risk (CMAR) will take on the responsibility of security of the site until the end of the project. Tennova will remain responsible for security until the City takes possession.

**Question #4:** Will the CMAR be allowed onsite for due diligence prior to the City taking possession?

Response: Yes, the Purchase and Sale agreement will allow some due diligence and the City expects the CMAR to work with the team toward beginning abatement immediately upon the City taking possession of the site.

**Question #5:** Is the abatement and demolition of the north site included in the budget/scope?

Response: Yes, pending City Council approval of the additional funding for the north site.

**Question #6:** Will the City reopen Emerald Avenue through the site?

Response: No.

**Question #7:** Will there still be occupants in the buildings when the CMAR takes responsibility for the site?

Response: Possibly. There are still a few leaseholders with a few doctor offices in the Clarke Tower and the LMU Nursing program in the original part of the hospital.

**Question #8:** Will holding cells be required?

Response: No. There will be a requirement for interview rooms but no holding cells.

**Question #9:** Will the central plant be completely demolished?

Response: Yes. The CMAR will be required to disconnect all utilities. The Clarke Tower and original hospital on the north site will be reconnected as one unit (by a developer of that site) and the CMAR will be required to establish new utilities for the renovated and new build on the south site. The CMAR will be responsible for temporary utilities for up to at least two years onsite.

**Question #10:** Will high bays be required for emergency apparatus?

Response: That is not known at this time. If so, it may require a new build.

**Question #11:** What is the construction schedule?

Response: The current construction schedule is 18 months for the abatement, interior demolition and build out on the south site and the abatement and demolition on the north site. Upon completion of the environmental survey during the due diligence period and following the conveyance of the property, abatement and interior demolition will commence in the Professional Office Building, Central Annex, Women's Pavilion and continue north toward the Central Wing in the proposed location of the new Municipal Court and Lobby.

**Question #12:** What is the design schedule?

Response: The total design duration is currently set at eleven months with anticipated completion in April 2020.

**Question #13:** What level of LEED is desired?

Response: At this time, the City is not planning to pursue LEED certification but expects proposals to include the qualifications of your LEED certified staff.

**Question #14:** Page 24, Item A.2, request we provide evidence of our financial capacity to provide a performance bond of up to \$15 million. Page 29 establishes a Construction Manager's Budget Limitation of \$35,500,000. Should Item A.2 on page 24 be revised to read \$35,500,000?

Response: Yes. Section 7.3, item A.2 is hereby deleted and replaced with the following: Evidence of the company's financial capacity to provide a performance bond of 100% of the contract construction cost.

**Question #15:** Page 14, Item 6.8, Insurance provides the types of insurance required and their associated levels of coverage the CMAR is to provide. Page 25, Relevant Experience, Item 6 says the CMAR will be asked to provide a Contractor Controlled Insurance Program (CCIP) for the project. This conflicts with item 6.8. Please advise if a CCIP will be required.

Response: A CCIP will not be required. Section 7.3, Item C.6 requiring a CCIP is hereby deleted.

**Question #16:** Please clarify the following:

On page 22, Section 7.2 Submission Information states that submittals tabs should be:

- A. Corporate Information/Responsive to Proposals*
- B. Project Understanding*
- C. Relevant Experience*
- D. Staffing Plan/Proposals*
- E. DBE Participation Plan*
- F. Location of Firms*
- G. References*
- H. Pricing Delivery Proposal Forms*

However, on pages 23 - 26, states *Proposals shall be structured as follows:* and it is different than page 22

It has the above section *H. Pricing Delivery Proposal Forms* prior to the A - E tabs, which are different than above, with items E and F above being included in one of the below sections:

- A. Corporate Information/Responsive to Proposals (includes F. above)
- B. Project understanding
- C. Relevant Experience (includes E. above)
- D. Staffing Plan/Proposals of Propose Team
- E. References

Please clarify which order is preferred.

Response: The required submittal tabs in Section 7.2 are hereby revised to match those required in Section 7.3 as follows:

- A. Corporate Information/Responsive to Proposals (includes F. above)
- B. Project understanding
- C. Relevant Experience (includes E. above)
- D. Staffing Plan/Proposals of Propose Team
- E. References

**Question #17:** Section 2 – RFP Timeline. Given the tight timeframe between the deadline for questions and when proposals are due, would the City be willing to extend the Due Date to Friday, May 31<sup>st</sup>?

Response: No, due to the tight timeline the City is on to coordinate the contract, an extension will not be allowed.



**Question #18:** Section 7.2 – Submission Information. Considering the extent of information requested, would the City be willing to increase the maximum # of pages?

Response: Yes, Please use the minimum number of pages possible to provide the requested information.

**Question #19:** Section 7.3 – Format. A.4. – What level of detail does the City want in the Company Org Charge?

Response: Provide name, title and role/responsibility for this project.

**Question #20:** Section 7.3 – Format. A.6 – Is there a distinction between this question and the ones asked in Section B.1?

Response: A.6 is asking for a general description of firm's preconstruction department resources, B.1 is asking you to expand on how those resources will be applied to this specific project.

**Question #21:** Submission Form S-1 Pricing Delivery Proposal. Regarding quoting a General Conditions %, we don't know what specifically should be included in General Conditions vs. Cost of the Work. Also, since there is currently limited information regarding design, it is difficult to develop an accurate schedule. With an accurate schedule, it is difficult estimate an accurate Lump Sum amount for General Conditions. To address this, could the City please consider clarifying the following information:

- a. Detail of specific items/costs to be included in the General Conditions (versus Cost of the Work)?

Response: A list of Lump Sum and Monthly items to be included in General Conditions based on an 18 month construction schedule is included in the "Safety Complex CMAR - General Conditions Cost Detail/Proposal" attached to this addendum. This form shall be included in the submissions.

- b. Note which GC items are to be "Lump Sum" vs. "Monthly"?

Response: A list of Lump Sum and Monthly items to be included in General Conditions based on an 18 month construction schedule is included in the "Safety Complex CMAR - General Conditions Cost Detail/Proposal" attached to this addendum.

**Question #22:** In order to more fairly evaluate proposers, could the City please consider deleting language asking for the # of months and instead apply the same # of months to each proposer's monthly GCs, then add the Lump Sum costs to calculate the total GC costs.

Response: A list of Lump Sum and Monthly items to be included in General Conditions based on an 18 month construction schedule is included in this addendum.

**END OF ADDENDUM NO. 2**

**PURCHASE AND SALE AGREEMENT**

**by and between**

**METRO KNOXVILLE HMA, LLC,  
a Tennessee limited liability company**

**("Seller")**

**and**

**CITY OF KNOXVILLE, TENNESSEE,  
a municipal corporation organized and existing under the laws of the State of Tennessee**

**("Purchaser")**

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into by and between METRO KNOXVILLE HMA, LLC, a Tennessee limited liability company ("**Seller**"), and CITY OF KNOXVILLE, TENNESSEE, a municipal corporation organized and existing under the laws of the State of Tennessee ("**Purchaser**").

### WITNESSETH:

For and in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser agree as follows:

#### ARTICLE I DEFINITIONS & CONSTRUCTION

1.01 Definitions. For purposes of this Agreement, each of the following terms, when used with an initial capital letter, shall have the meaning ascribed to it in this Article:

(i) "**Affiliate**" means any person or entity that owns or controls, is owned or controlled by, or is under common ownership or control with the party in question. As used in the preceding sentence, (A) an entity shall be deemed to own another entity if it holds legal or equitable title to fifty percent (50%) or more of the common stock, partnership interests, limited partnership interests, membership interests or other ownership interests of such other entity, and (B) the term "control" (and its derivatives) shall mean the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through voting rights, by contract or otherwise.

(ii) "**Business Days**" means Monday through Friday, excluding federal holidays on which national banking associations in Knoxville, Tennessee are authorized to be closed.

(iii) "**Closing**" means the closing and consummation of the purchase and sale of the Property pursuant to this Agreement.

(iv) "**Closing Date**" means the date upon which the Closing occurs.

(v) "**Current Tax Period**" means the tax year in which the Closing occurs.

(vi) "**Effective Date**" means the latest date upon which Seller or Purchaser executes this Agreement, as shown on the signature block set forth below.

(vii) "**Entity**" means any person, partnership, limited partnership, joint venture, corporation, limited liability company, trust, governmental authority or other entity.

(viii) "**Escrow Agent**" means Tennessee Valley Title Insurance Co., 800 S. Gay Street, Suite 1700, Knoxville, Tennessee 37929, Attention: Ryan P. McNally, Esq., Phone: (865) 523-6254, Email: ryan@tnvalleytitle.com.

(ix) "**Hazardous Substances**" means all hazardous wastes, hazardous substances, extremely hazardous substances, hazardous constituents, hazardous materials and toxic substances that are regulated under any Legal Requirements pertaining to health, safety or the environment, including, but not

limited to, (A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq., (B) the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. § 5101 et seq., (C) the Resource, Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq., (D) the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq., (E) the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. § 2601 et seq., (F) the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (G) any so-called “superfund” or “superlien” law, and (H) or any other Federal, State, or local statute, or law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability for standards of conduct concerning any substance or material, as presently in effect.

(x) **“Inspection Period”** shall have the meaning ascribed to it in Section 3.01.

(xi) **“Intangibles”** means all right, title and interest of Seller in and to (A) all certificates of occupancy or use, permits and licenses held by Seller, if any, which relate exclusively to the ownership, use or operation of the Real Property, (B) all unexpired warranties and guaranties, if any, which relate exclusively to the Real Property, in each case, only to the extent the same are freely transferrable by Seller without cost or consent, and (C) all licenses or similar arrangements granted to third parties that are Permitted Exceptions. For the avoidance of uncertainty, the parties acknowledge and agree that the “Intangibles” shall not include (i) any of the items described above which relate to or are used in connection with the business operations of Seller or any of its Affiliates or any real property (other than the Real Property) owned or leased by Seller or any of its Affiliates, or (ii) any names, trademarks, logos or other symbols used in connection with the Real Property.

(xii) **“Legal Requirements”** means all applicable governmental laws, statutes, codes, ordinances, rules, regulations, orders, judgments and decrees.

(xiii) **“Monetary Liens”** means all liens, mortgages, deeds of trust, financing statements and other security interests encumbering the Property that were granted by Seller or are the direct result of the affirmative acts of Seller. Monetary Liens shall not include (A) the lien for unpaid Property Taxes for the Current Tax Period and subsequent years and (B) any liens under the Permitted Exceptions that secure amounts first (1<sup>st</sup>) arising after the Closing.

(xiv) **“Owner’s Title Policy”** means an owner’s title insurance policy issued by Escrow Agent that insures Purchaser is the owner of the Real Property, subject to the Permitted Exceptions, is in the amount of the Purchase Price, and is based on the Title Commitment.

(xv) **“Permitted Exceptions”** means (A) Property Taxes for the Current Tax Period and subsequent years, (B) zoning regulations and other governmental laws, rules, regulations, codes, orders and directives affecting the Property, (C) matters arising as a result of the acts or omissions of Purchaser or any of its Affiliates, agents, employees, contractors or representatives, and (D) those matters disclosed by the Title Commitment or the Survey and not objected to or waived by the Purchaser pursuant to Section 3.02.

(xvi) **“Phase I Environment Assessment”** mean a Phase I environmental site assessment conducted in accordance with the standards set forth in ASTM E1527-05.

(xvii) **“PILOT Leases”** shall have the meaning set forth in Section 7.03(b)(iv).

(xviii) **“Property”** means the Real Property and the Intangibles.

(xix) **“Property Taxes”** means the real property taxes and assessments (general and special, public and private) levied against the Real Property.

(xx) **"Purchase Price"** shall have the meaning set forth in Section 2.02.

(xxi) **"Real Property"** means all right, title and interest of Seller in and to the real property generally located at 900 East Oak Hill Avenue, Knoxville, Tennessee, generally depicted in red on Schedule 1.01 (xxv), and more particularly described in the legal descriptions included in Schedule 1.01 (xxv), including, but not limited to, the buildings, structures, fixtures, and other improvements located on said real property.

(xxii) **"Required Closing Date"** means the date which is seventy-five (75) days after the end of the Inspection Period, as the same may be extended pursuant to the express provisions of this Agreement.

(xxiii) **"Seller's Actual Knowledge"** means the actual, affirmative knowledge of a current officer of Seller without any diligence, inquiry, investigation or imputation.

(xxiv) **"Submission Items"** means the items described on Schedule 1.01 (xxix) to the extent the same are under the possession or, to Seller's Actual Knowledge, control of Seller; provided the "Submission Items" shall not include any such item that Seller is prohibited from disclosing under any applicable Legal Requirements if Seller provides to Purchaser a description of such item and the Legal Requirement that prohibits such disclosure.

(xxv) **"Title Commitment"** means the Commitment for an ALTA Owner's Extended Coverage Policy of Title Insurance (2006) issued by or through the Escrow Agent (as agent for First American Title Insurance Company) that shows the status of title to the Real Property.

(xxvi) **"Transaction Documents"** means this Agreement and the documents executed by Seller and/or Purchaser at the Closing.

## ARTICLE II PURCHASE & SALE

2.01 **Purchase & Sale.** Subject to and in accordance with the terms of this Agreement, Seller agrees to sell all of its right, title and interest in the Property to Purchaser and the Purchaser agrees to purchase all of Seller's rights, title and interest in the Property from Seller.

2.02 **Purchase Price.** At the Closing, Purchaser shall pay One Dollar (\$1.00) for the Property (the **"Purchase Price"**) to Seller, in immediately available funds, less any adjustments expressly provided for in ARTICLE VIII.

## ARTICLE III INSPECTION

3.01 **Inspection.**

(a) For purposes of this Agreement, the term **"Inspection Period"** means and refers to the period commencing on the Effective Date and expiring one-hundred twenty (120) days thereafter.

(b) During the Inspection Period, Purchaser shall conduct its inspection of the Property, subject to the other terms and conditions hereof, including, without limitation, Section 3.03. Purchaser shall be solely responsible for conducting all inspections and investigations required to confirm the Property is

satisfactory to Purchaser. Purchaser may terminate this Agreement for any reason, as determined by Purchaser in its sole and absolute discretion, by giving written notice to Seller on or before the last day of the Inspection Period.

3.02 Title & Survey Review. Seller has obtained and provided to Purchaser, the Title Commitment and copies of all exception documents referenced therein, and Seller shall obtain and deliver to Buyer an ALTA survey of the Real Property prepared by Benchmark Associates, Inc. (the "Survey") within thirty (30) days of the date hereof. After delivery of such Survey, within ten (10) days after written request from Seller, Purchaser shall reimburse Seller for the actual costs of the Title Commitment and Survey, which reimbursement obligation of Purchaser shall survive termination of this Agreement. If the Title Commitment or the Survey, or any update to either of them, reveal any material defects in title to the Property, then Purchaser may object to such defects by giving written notice to Seller prior to the expiration of the Inspection Period (any such objections being referred to as the "Title & Survey Objections"). Seller may, but shall not be obligated to, endeavor to cure the Title & Survey Objections, and Seller shall have the right to postpone the Closing for up to thirty (30) days in connection therewith. All matters shown on the Title Commitment and Survey to which Purchaser does not timely object, in accordance with the terms of this Section 3.02, shall be deemed to have been approved by Purchaser. In the event Seller does not cure any of the Title & Survey Objections by the date the Closing is scheduled to occur, then Purchaser may, as its sole and exclusive remedy, either: (i) terminate this Agreement by giving written notice to Seller prior to the Closing; or (ii) waive such Title & Survey Objections and proceed with the Closing. Notwithstanding the foregoing, if Seller notifies Purchaser, in writing, that it is unable or unwilling to cure any of the Title & Survey Objections, then Purchaser must give written notice to Seller within ten (10) business days thereafter of its intent to waive such Title & Survey Objections or Purchaser shall be deemed to have terminated this Agreement.

3.03 Entry & Access. During the Inspection Period, Purchaser and its agents, employees, contractors and representatives shall have the right to enter upon the Property for purposes of performing inspections, surveys, environmental audits and other similar activities; provided (i) Purchaser shall obtain Seller's prior written approval of the scope and method of any environmental testing or investigation which would materially alter the physical condition of the Property, which approval shall not be unreasonably withheld or delayed, (ii) Purchaser shall comply with the terms of this Agreement, any existing leases, the Permitted Exceptions and Legal Requirements, and (iii) Purchaser shall not materially interfere with any tenant's use of the Property. Before Purchaser (or any of its agents, employees, contractors or representatives) may enter upon the Property, Purchaser shall give twenty-four (24) hours advance notice to Seller. Seller may accompany, or have an employee of Seller's property manager accompany, Purchaser and its agents, employees, contractors and representatives while they are on the Property. Purchaser is a municipal entity subject to the Tennessee Governmental Tort Liability Act, Tenn. Code Ann. Section 29-20-101 *et seq.* and is self-insured. Purchaser shall provide Seller with a letter confirming the amount of its self-insured liability retention prior to Purchaser or any of its agents, employees, contractors or representatives entering on the Property. Purchaser shall require any agent, contractor or representative of Purchaser entering upon the Property to maintain commercial general liability insurance, with a combined single limit for personal injury, death, and property damage of not less than One Million Dollars (\$1,000,000.00) per occurrence and naming Seller as an additional insured, and Purchaser shall provide to Seller a certificate or other evidence of such insurance. If Closing does not occur, Purchaser, at Seller's request, shall promptly repair all damage to the Property resulting from Purchaser's exercise of its rights under this section or caused by Purchaser (or any of its agents, employees, contractors or representatives). In addition, to the extent permitted by law, Purchaser shall indemnify, defend and hold harmless Seller from and against all claims, demands, actions, lawsuits, liabilities, damages, costs and expenses (including, but not limited to, court costs, litigation expenses and reasonable attorneys' fees) arising as a result of any acts, negligence or misconduct of Purchaser or any of its agents, employees, contractors or representatives ("Purchaser's Representatives") occurring on or about the

Property prior to the Closing or any inspections or other activities conducted by or on behalf of Purchaser pursuant to this section, except to the extent the same are directly due to the negligence or willful misconduct of Seller or any of its agents, employees, contractors or representatives. Purchaser's obligations under this Section 3.03 shall survive the termination of this Agreement or the Closing, as applicable.

3.04 Submission Items. Within ten (10) days after the Effective Date, Seller shall deliver to Purchaser the Submission Items. Purchaser acknowledges and agrees that Seller has not made and is not making any representations or warranties regarding the Submission Items, Purchaser shall have no right to rely on the Submission Items unless Purchaser obtains from the applicable issuer, a reliance letter or similar confirmation of its right to rely on such Submission Items, and Purchaser utilizes the Submission Items at its own risk.

3.05 Due Diligence Materials. If this Agreement is terminated for any reason other than a default by Seller, (i) Purchaser shall furnish Seller with a copy of all title insurance commitments, surveys, physical condition assessments, zoning analysis and environmental assessments related to the Property obtained by Purchaser, and (ii) Purchaser shall return all of the Submission Items to Seller. The provisions of this Section 3.05 shall survive the termination of this Agreement.

3.06 Termination. If Purchaser fails to deliver a written notice of its intent to proceed with its purchase of the Property in accordance with the terms of this Agreement, subject to satisfaction of the Purchaser Closing Conditions, to Seller on or before the last day of the Inspection Period, then Purchaser will be deemed to have terminated this Agreement.

#### ARTICLE IV LIENS; PERSONAL PROPERTY

4.01 Monetary Liens. Seller shall cause all Monetary Liens to be released by the Closing excluding the lien for Property Taxes for the Current Tax Period and subsequent years which are not yet due and payable.

4.02 Personal Property. Seller shall have the right (but not the obligation) to remove, or permit the removal of, any trade fixtures, equipment, furnishings and other personal property located at the Real Property (the "Personal Property") prior to the Closing. In the event any portion of the Personal Property remains on the Property after the Closing, Purchaser may utilize or dispose, at Purchaser's expense, of such Personal Property as it sees fit and Seller shall have no responsibility or liability in connection therewith.

#### ARTICLE V REPRESENTATIONS & WARRANTIES

5.01 Seller Representations and Warranties. Subject to the other terms hereof, Seller represents and warrants to Purchaser that as of the Effective Date and as of the Closing:

(a) (i) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Tennessee, (ii) Seller has all power and authority necessary for it to execute and deliver this Agreement and perform its obligations hereunder, and (iii) the execution, delivery and performance of this Agreement by Seller does not conflict with or constitute a breach of any contract, agreement or other instrument by which Seller or the Property is bound;

(b) Seller has not received actual notice of any material, uncured default (nor, to Seller's Actual knowledge, is there any default) under any outstanding note or deed of trust related to or secured by the

Property; the execution and delivery of this Agreement by Seller and Seller's performance of its obligations under this Agreement does not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court, arbiter or governmental instrumentality in any action to which Seller is a party;

(c) Seller has not (i) filed any voluntary petition in bankruptcy or sought to reorganize its affairs under the Bankruptcy Code of the United States or any other federal, state or local law related to bankruptcy, insolvency or relief for debtors, (ii) been adjudicated as bankrupt or insolvent, or (iii) had an involuntary petition filed against it under the Bankruptcy Code of the United States or any other federal, state or local law related to bankruptcy, insolvency or relief for debtors;

(d) Seller is not a person or entity with whom U.S. persons are restricted from doing business under the regulations of the Office of Foreign Assets Control ("OFAC") of the Department of Treasury (e.g. OFAC's Specially Designated and Blocked Persons list), Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 ("Executive Order 13224"), or the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 ("USA Patriot Act");

(e) Seller is not a party to any litigation which is still pending, and to Seller's Actual Knowledge, no litigation is currently threatened against Seller, which litigation in either instance affects the Property;

Subject to the limitations set forth in Section 10.03, Seller hereby indemnifies and holds harmless Purchaser from and against any and all loss, expense (including without limitation reasonable attorney fees), liability, cost, claim, demand, action, cause of action and suit arising out of or in any way related to any breach of any representation, warranty, covenant or agreement of Seller in this Agreement.

5.02 Purchaser Representations and Warranties. Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing:

(a) (i) Purchaser is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of Tennessee, (ii) Purchaser has all power and authority necessary for it to execute and deliver this Agreement and perform its obligations hereunder, and (iii) the execution, delivery and performance of this Agreement by Purchaser does not conflict with or constitute a breach of any contract, agreement or other instrument by which Purchaser is bound;

(b) (i) the execution and delivery of this Agreement by Purchaser and Purchaser's performance of its obligations under this Agreement does not conflict with or result in a breach of any order, judgment, writ, injunction or decree of any court, arbiter or governmental instrumentality in any action to which Purchaser is a party as of the Effective Date, and (ii) this Agreement and any documents executed by Purchaser pursuant to this Agreement are binding and enforceable against Purchaser;

(c) Purchaser is not a party to any pending lawsuits or governmental proceedings that could have a material adverse effect on Purchaser's ability to perform its obligations under this Agreement;

(d) Purchaser has not (i) filed any voluntary petition in bankruptcy or sought to reorganize its affairs under the Bankruptcy Code of the United States or any other federal, state or local law related to bankruptcy, insolvency or relief for debtors, (ii) been adjudicated as bankrupt or insolvent, or (C) had an involuntary petition filed against it under the Bankruptcy Code of the United States or any other federal, state or local law related to bankruptcy, insolvency or relief for debtors;



(e) Purchaser's source of funds for the acquisition of the Property will not involve any amounts that violate or would be subject to seizure under 18 U.S.C. §§1956-1957 (Laundering of Money Instruments), 18 U.S.C. §§ 981-986 (Federal Asset Forfeiture), 21 U.S.C. § 881 (Drug Property Seizure), Executive Order 13224, or the USA Patriot Act; and

(f) (i) neither Purchaser nor any of its Affiliates nor any person or entity owning an interest in either of them is a person or entity with whom U.S. persons are restricted from doing business under legal requirements, including, without limitation, the regulations of the OFAC of the Department of Treasury (e.g. OFAC's Specially Designated and Blocked Persons list), Executive Order 13224 or the USA Patriot Act, and (ii) prior to the Closing, Purchaser will submit all information reasonably requested by Seller in order for Seller to confirm the foregoing.

5.03 Survival. The representations and warranties of the parties in ARTICLE V shall survive the Closing or termination of this Agreement for a period of one (1) year.

#### ARTICLE VI DISCLOSURES & DISCLAIMERS

6.01 "As Is-Where Is" Sale. EXCEPT FOR THE REPRESENTATIONS, WARRANTIES, GUARANTEES AND ASSURANCES EXPRESSLY SET FORTH IN THE TRANSACTION DOCUMENTS, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, IS NOT MAKING AND SPECIFICALLY DISCLAIMS AND NEGATES ANY WARRANTIES, REPRESENTATIONS, GUARANTEES OR ASSURANCES (EXPRESS OR IMPLIED) REGARDING THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, WARRANTIES, REPRESENTATIONS, GUARANTEES AND ASSURANCES REGARDING (I) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER OR ABOUT THE PROPERTY, (II) THE ENVIRONMENTAL CONDITION OF THE PROPERTY, (III) THE QUALITY, NATURE, ADEQUACY OR PHYSICAL CONDITION OF THE PROPERTY, (IV) THE QUALITY, NATURE, ADEQUACY OR CONDITION OF THE SOILS AND GROUNDWATER AT THE PROPERTY, (V) THE EXISTENCE, QUALITY, NATURE, ADEQUACY OR CONDITION OF ANY UTILITIES AT OR NEAR THE PROPERTY, (VI) THE CURRENT OR FUTURE INCOME OR EXPENSES OF THE PROPERTY, (VII) THE VALUE, PROFITABILITY, HABITABILITY, SUITABILITY, MERCHANTABILITY, MARKETABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (VIII) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY, (IX) THE EXISTENCE OF ANY PENDING OR THREATENED TAKING OF ALL OR A PORTION OF THE PROPERTY BY CONDEMNATION OR EMINENT DOMAIN, (X) THE PROPERTY'S COMPLIANCE WITH ANY LEGAL REQUIREMENTS OR ANY COVENANT, CONDITION, RESTRICTION OR OTHER ENCUMBRANCE, OR (XI) THE CONDITION OF TITLE TO THE PROPERTY OR THE NATURE, STATUS OR EXTENT OF ANY EASEMENT, RIGHT OF WAY, ENCUMBRANCE, LICENSE, RESERVATION OR OTHER MATTER AFFECTING TITLE TO THE PROPERTY. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY "AS-IS, WHERE-IS" WITH ALL FAULTS AND ALL LATENT OR PATENT DEFECTS.

EXCEPT FOR CLAIMS BASED ON SELLER'S BREACH OF THE TRANSACTION DOCUMENTS, AS OF THE CLOSING, PURCHASER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, SHALL BE DEEMED TO HAVE WAIVED, RELEASED AND DISCHARGED SELLER FROM ALL CLAIMS THAT PURCHASER OR ITS SUCCESSORS OR ASSIGNS HAS OR MAY HAVE AGAINST SELLER RELATING TO THE PROPERTY, WHETHER KNOWN OR UNKNOWN, EXISTING OR ARISING IN THE FUTURE, INCLUDING, NOT LIMITED TO, CLAIMS ARISING OR RESULTING FROM (I) STATEMENTS OR OPINIONS MADE BY SELLER

OR ANY OF ITS AGENTS, EMPLOYEES, PROPERTY MANAGERS, CONTRACTORS OR REPRESENTATIVES, OR (II) THE PHYSICAL OR FINANCIAL CONDITION OF THE PROPERTY, OR (III) THE EXISTENCE OF ANY HAZARDOUS SUBSTANCES ON, UNDER OR ABOUT THE PROPERTY OR THE ENVIRONMENTAL CONDITION OF THE PROPERTY. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT PURCHASER, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, IS WAIVING, RELEASING AND DISCHARGING ALL CLAIMS FOR CONTRIBUTION OR INDEMNITY THAT PURCHASER OR ITS SUCCESSORS AND ASSIGNS HAS OR MAY HAVE AGAINST SELLER, WHETHER KNOWN OR UNKNOWN, EXISTING OR ARISING IN THE FUTURE, BASED, IN WHOLE OR IN PART, UPON THE PRESENCE ON OR DISCHARGE FROM THE PROPERTY OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONTAMINATION, INCLUDING, WITHOUT LIMITATION, CLAIMS THAT MAY ARISE UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED 42 U.S.C. § 9601 ET SEQ.

6.02 Survival. The provisions of this ARTICLE VI shall survive the Closing and delivery of the Deed.

## ARTICLE VII CLOSING

7.01 Closing. Subject to the other terms of this Agreement, the Closing shall take place at 10:00 a.m. Eastern Time on the Required Closing Date. The Closing shall be held through the offices of the Escrow Agent or at such other place as may be agreed upon by Purchaser and Seller, in writing.

### 7.02 Closing Deliveries.

(a) Deed. At the Closing, Seller shall convey all of Seller's right, title and interest in the Real Property to Purchaser, by duly executed and recordable special warranty deed in the form attached hereto as Schedule 7.02-A (the "Deed"), subject to the Permitted Exceptions.

(b) Assignment of Intangibles. At the Closing, Seller shall convey all of Seller's right, title and interest in the Intangibles to Purchaser, by a duly executed assignment of intangible property in the form attached hereto as Schedule 7.02-B, provided, however, that if the assignment of any item of intangible property requires the consent of any third party not affiliated with Seller or any payment in consideration of obtaining such consent, Seller shall not be required to assign such item of intangible property unless Purchaser obtains such consent, as to which Seller shall cooperate in obtaining, and/or Purchaser pays such consideration.

(c) Owner's Affidavit. At the Closing, Seller shall execute and deliver to Purchaser and the Escrow Agent an owner's affidavit in such form as is required by the Escrow Agent and is reasonably acceptable to Seller.

(d) Evidence of Authority. At the Closing, Seller shall deliver evidence in form and substance reasonably satisfactory to Escrow Agent that Seller has the power and authority to execute and perform its obligations under this Agreement.

(e) 1445 Certificate. At the Closing, Seller shall execute and deliver to Purchaser a properly completed certificate conforming to the requirements of Treasury Regulations 1.1445-2(b)(2).

(f) Closing Statement. At the Closing, Seller and Purchaser shall execute a written statement for the Property that sets forth the Purchase Price, any credits against the Purchase Price provided for

in this Agreement, all amounts prorated between the parties pursuant to this Agreement, and all disbursements to be made at the Closing on behalf of Seller or Purchaser.

7.03 Conditions to Closing.

(a) Purchaser Closing Conditions. Purchaser's obligation to consummate the transaction contemplated by this Agreement is contingent upon all of the following conditions (the "**Purchaser Closing Conditions**") being satisfied as of the date and time the Closing is scheduled to take place under Section 7.01:

(i) Each of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects, and each of the representations and warranties made by Seller in this Agreement shall be true, accurate and complete in all material respects as of the Closing Date; and

(ii) Seller executing and delivering all of the documents required under Section 7.02; and

(iii) An enforceable commitment to issue the Owner's Title Policy shall have been delivered to Purchaser and shall only include Permitted Exceptions.

If any one of the Purchaser Closing Conditions is not satisfied as of the date and time the Closing is scheduled to occur, then Purchaser may: (i) terminate this Agreement by written notice to Seller; or (ii) waive such Purchaser Closing Conditions and proceed with the Closing. Nothing in this Section 7.03(a) shall limit the remedies available to Purchaser as a result of Seller's default under this Agreement.

(b) Seller Closing Conditions. Seller's obligation to consummate the transaction contemplated by this Agreement is contingent upon all of the following conditions (the "**Seller Closing Conditions**") being satisfied as of the date and time the Closing is scheduled to take place under Section 7.01:

(i) Each of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects, and each of the representations and warranties made by Purchaser in this Agreement shall be true, accurate and complete in all material respects as of the Closing Date; and

(ii) Seller's receipt of the Purchase Price from Purchaser, subject to the prorations, credits and adjustments expressly provided for in this Agreement;

(iii) Purchaser executing and delivering all of the documents required under Section 7.02;

(iv) Purchaser shall have delegated to The Industrial Development Board of the City of Knoxville, Tennessee (the "**IDB**") the authority to negotiate and execute two (2) PILOT Leases (the "**PILOT Leases**") relating to payments in lieu of taxes with respect to two (2) parcels to be selected and subdivided by Seller from the property presently owned by Seller located on Middlebrook Pike in Knoxville, Tennessee, which property is generally shown on Schedule 7.03(b)(iv)-A attached hereto (the "**Middlebrook Property**"). The parties acknowledge that the parcels have not been subdivided, and prior to the execution of each PILOT Lease, Seller shall cause the subdivision of such parcels from the Middlebrook Property. The Purchaser agrees to assist and cooperate, at no expense to it, with the efforts of Seller to subdivide the

Middlebrook Property. Seller shall retain the right in each PILOT Lease, during the Construction Period (as defined below) to make such changes to the boundaries of such parcels as may be deemed necessary to facilitate the development of the parcels as described herein and in the terms of the PILOT Leases to be approved by the Purchaser. Seller has informed the Purchaser that Seller intends to cause the construction of health care facilities on such parcels, some of which will provide for services presently provided on the Property, and Seller will agree in each PILOT Lease to cause the construction of health care facilities on the applicable parcel within three (3) years after the execution of the PILOT Agreement. Each PILOT Lease shall provide that Seller shall make payments in lieu of taxes for the term of the PILOT Lease with respect to the property that is the subject of the PILOT Lease in any tax year of an amount equal to the taxes presently being paid to the Purchaser and Knox County, Tennessee (the "County") for tax year 2018 based upon an amount of the 2018 taxes to be agreed upon by the parties as is reasonably allocable to the parcels subject to the PILOT Lease as if such parcel had been separately subdivided in 2018. The term of each PILOT Lease shall not exceed 15 years plus a reasonable construction period (the "Construction Period") of the lesser of three (3) years or the actual period of construction, provided, however, at the election of Seller by notice to Purchaser and the IDB, the term of the PILOT Lease for one parcel of the Middlebrook Property may have an extended term of up to an additional two (2) years with Seller making a payment in lieu of taxes during such additional period, which additional period shall occur at the beginning of the term of the such PILOT Lease before any construction commences, in an amount equal to the real property taxes that would otherwise be payable with respect to the property subject to such PILOT Lease if owned by a private party. Seller shall agree in each PILOT Lease that no portion of the property that is the subject of the PILOT Lease shall be used for retail purposes without first receiving the proper consent of the Purchaser. Under the PILOT Leases, the aggregate amount that Seller shall be entitled to receive as an effective reduction in ad valorem real property taxes with respect to all property subject to the PILOT Leases shall be \$16,000,000, to be allocated between the PILOT Leases by Seller as reasonably acceptable to the Purchaser. If Seller has received the maximum aggregate benefit of such an effective reduction in real property taxes under the PILOT Leases prior to the expiration thereof, Seller shall thereafter make payments in lieu of taxes to the Purchaser and the County in amounts equal to the real property taxes that otherwise would have been payable with respect to the property that is the subject of the PILOT Agreement. The parties acknowledge that the plans and costs for the development and construction of improvements upon each parcel will likely not be completed at the time of execution of each PILOT Lease, and in such event, the applicable PILOT Lease shall provide for amendment thereof to effectuate the terms of this Agreement and to comply, to the extent necessary, with applicable laws. Seller shall be permitted to assign each PILOT Lease in whole or in part to affiliates of Seller, a turn-key developer or any other entities that have an interest in the property that is the subject of the PILOT Lease (the "Assignees") so that such parties may receive the benefit of the PILOT Lease provided that if the assignment is to an unrelated party, Seller shall demonstrate to the satisfaction of the Purchaser that Seller will initially have an active involvement in the operation of the property either through a lease, a management contract, ownership interest or other comparable arrangement. The form of the PILOT Leases is attached hereto as Schedule 7.03(b)(iv)-B, and the approval and authorization of each PILOT Lease by the IDB and execution of each PILOT Lease, in such form with such revisions as are acceptable to Seller and the Purchaser (as determined by the Mayor or Deputy Mayor of the City of Knoxville), shall be a Seller Closing Condition, and the failure of the IDB to authorize, execute or deliver any PILOT Lease shall not be a default by Purchaser.

If any one of the Seller Closing Conditions is not satisfied as of the date and time the Closing is scheduled to occur, then Seller may: (i) terminate this Agreement by written notice to Purchaser; (ii) waive such Seller Closing Conditions and proceed with the Closing, or (iii) extend the Required Closing Date until the Seller Closing Conditions are satisfied but in no event for a period longer than ninety (90) days. Nothing in this Section 7.03(b) in this shall limit the remedies available to Seller as a result of Purchaser's default under this Agreement.

7.04 Closing Costs.

(a) Seller Closing Costs. At the Closing, Seller shall pay fifty percent (50%) of the fees charged by the Escrow Agent to coordinate the Closing.

(b) Purchaser Closing Costs. At the Closing, Purchaser shall pay: (i) fifty percent (50%) of any fees charged by the Escrow Agent to coordinate the Closing; (ii) all transfer taxes, documentary stamps, intangible taxes, surtaxes, recording charges and other similar fees due in connection with the transfer of the Property to Purchaser and the recording of the documents described in Section 7.02; and (iii) the premium for the Owner's Title Policy and the cost of any extended coverage or other endorsements requested by Purchaser and to the extent not previously reimbursed to Seller as provided in Section 3.02.

(c) Other Costs. Except as otherwise expressly provided herein, Seller and Purchaser shall each be responsible for paying the attorneys' fees that it incurs in connection with the transaction contemplated by this Agreement. In addition, Purchaser shall pay, prior to delinquency, all expenses incurred by Purchaser in connection with its due diligence with respect to the Property (including, but not limited to, the cost of physical inspections, surveys, environmental assessments, zoning and permits reviews), and any financing obtained by Purchaser in connection with its acquisition of the Property.

ARTICLE VIII  
PRORATIONS

8.01 Calculation. All prorations to be made under this section "as of the Closing Date" shall be made as of 11:59 P.M. local time on the day immediately preceding the Closing Date, with the effect that Seller shall pay the portions of the expenses and receive the portions of the income to be prorated under this Agreement which are allocable to periods prior to the Closing Date and Purchaser shall pay the portions of such expenses and receive the portions of such income which are allocable to periods from and after the Closing Date.

8.02 Property Taxes.

(a) Current Tax Period. Seller and Purchaser acknowledge that the Property will be exempt from Property Taxes after the Closing. The Property Taxes for the Current Tax Period shall be prorated between Seller and Purchaser as of the Closing Date and the Seller shall pay its portion of such Property Taxes at the Closing. If the Property Taxes for the Current Tax Period are not yet due and payable on the Closing Date, then Seller shall pay to Purchaser at Closing an amount equal to its estimated portion of such Property Taxes as of the Closing Date and such amount shall be subject to adjustment pursuant to Section 8.04 hereof.

(b) Contest of Prior Periods. Seller shall have the right to all refunds or rebates resulting from contests or appeals of any Property Taxes with respect to the years prior to the Current Tax Period. Seller may, at its option, contest or appeal any portion of the Property Taxes for the Current Tax Period, and the parties agree to prorate all refunds or rebates received on account thereof, based upon each parties' period of ownership of such Property during the Current Tax Period. Purchaser agrees to cooperate and assist with any contest or appeal by Seller of the Property Taxes, so long as Purchaser is not required to incur any costs or expenses in connection therewith.

8.03 Utilities. Seller shall pay, when due, all charges for utilities furnished to the Property prior to the Closing under any account maintained in Seller's name, and Seller shall be entitled to retain any utility

deposits made by Seller which are refundable. Purchaser shall be responsible for making arrangements for the continuation of such utilities to the Property from and after the Closing Date.

8.04 Unknown Amounts. In the event any amount to be prorated between the parties or credited to either of the parties under the terms of this ARTICLE VIII is not known with certainty as of the Closing, the parties shall use an estimate of such amount at the Closing. If more current information is not available, such estimates shall be based upon the prior operating history of the Property and the most recent prior bills. As such estimated amounts become finally known, Seller and Purchaser shall make any payments necessary to cause Seller and Purchaser to pay the amounts it is responsible for under this ARTICLE VIII, but no more. Seller and Purchaser agree to cooperate and use reasonable efforts to finalize the prorations or adjustments required under this ARTICLE VIII that cannot be completed as of the Closing no later than the later of: (i) ninety (90) days after the Closing, if possible or (ii) December 31 of the calendar year of the Closing Date.

8.05 Survival. The provisions of this ARTICLE VIII shall survive the Closing.

#### ARTICLE IX DAMAGE AND CONDEMNATION

9.01 Casualty.

(a) Until the Closing, Seller agrees to maintain its existing property insurance covering the Property (the "Property Insurance"). If the Property is materially damaged by fire or other casualty prior to the Closing, Purchaser may either terminate this Agreement (and the parties shall have no further obligations hereunder except as is specifically provided herein) or Purchaser may proceed with the Closing. If Purchaser elects to proceed with the Closing, Seller shall pay Purchaser an amount equal to insurance proceeds, if any, received by Seller on account of such damage under the Property Insurance, assign to Purchaser all insurance proceeds payable (but not yet paid) to Seller as a result of such casualty loss under the Property Insurance, and provide to Purchaser at Closing an amount equal to the deductible (if any) under the Property Insurance.

Seller shall be entitled to retain all proceeds paid as a result of any damage to the Property under Seller's rental loss insurance and business interruption insurance. Seller shall bear the risk of loss or damage to the Property until the Closing.

9.02 Condemnation. If there is an actual or pending taking of the Property by condemnation or eminent domain prior to the Closing (a "Taking") then, at the Closing, Seller shall pay Purchaser any condemnation awards received by Seller on account of such Taking except condemnation awards payable to the tenants under any existing leases, and Seller shall assign all of its interest in any unpaid condemnation awards due as a result of such Taking to Purchaser. Seller shall not reach any settlement or agreement related to any Taking after the Effective Date, unless Purchaser consents thereto, in writing, which consent shall not be unreasonably withheld, qualified or delayed.

#### ARTICLE X DEFAULT

10.01 Failure to Sell. If Seller breaches this Agreement by failing to sell the Property to Purchaser and Seller does not cure such breach within five (5) days after it is notified of the same by Purchaser, in writing, then Purchaser may, as its sole and exclusive remedy, either: (i) obtain specific performance of this Agreement; or (ii) terminate this Agreement and recover an amount equal to the out-of-pocket expenses incurred by Purchaser in connection with its inspection of the Property, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). In the event Purchaser desires to bring an action for specific performance

of this Agreement, Purchaser must commence such action within one-hundred and twenty (120) days after the date the Closing was supposed to occur. Purchaser's failure to commence an action for specific performance within the period required under this section shall constitute an irrevocable waiver of its right to bring the same.

10.02 Failure to Purchase. If Purchaser breaches this Agreement by failing to purchase the Property and Purchaser does not cure such breach within five (5) days after it is notified of the same by Seller, in writing, then Seller may, as its sole and exclusive remedy, terminate this Agreement and recover from Purchaser an amount equal to the out-of-pocket expenses incurred by Seller in connection with the negotiation, execution and performance of this Agreement by Seller, not to exceed One Hundred Thousand and No/100 Dollars (\$100,000.00) as liquidated damages. Purchaser and Seller agree that said liquidated damages are reasonable given the circumstances now existing, including, but not limited to, the range of harm to Seller that is reasonably foreseeable and the anticipation that proof of Seller's actual damages would be costly, impractical and inconvenient.

10.03 Other Defaults. Except as otherwise provided in Sections 10.01 and 10.02, if Seller or Purchaser breaches any of the terms of this Agreement and does not cure such breach within thirty (30) days after it is notified of the same by the non-breaching party, in writing, then the non-breaching party shall have the right to obtain any remedy available at law or in equity, including, but not limited to, the right to recover the damages that it suffers or incurs on account of the breach. Notwithstanding anything to the contrary, in no event shall either party be liable for consequential, incidental, exemplary or punitive damages as a result of its breach of this Agreement, and in no event shall the damages payable by either party under this Agreement pursuant to this Section exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). The remedies expressly set forth in Section 10.01 and this Section 10.03 shall be the only remedies available to Purchaser as a result of Seller's default under or breach of any of the Transaction Documents.

## ARTICLE XI MISCELLANEOUS

11.01 Notices. All notices, consents, approvals, deliveries and other communications (collectively, "Notices") which may be or are required to be given by either Seller or Purchaser under this Agreement shall be properly given only if made in writing and sent by hand delivery, U.S. Certified Mail, Return Receipt Requested, or nationally recognized overnight delivery service (such as Federal Express or UPS), with all delivery charges paid by the sender and addressed to Purchaser or Seller, as applicable, as follows:

If to Seller: Metro Knoxville HMA, LLC  
c/o CHSPSC, LLC  
4000 Meridian Boulevard  
Franklin, Tennessee 37067  
Attn: President

with copy to: Metro Knoxville HMA, LLC  
c/o CHSPSC, LLC  
4000 Meridian Boulevard  
Franklin, Tennessee 37067  
Attn: General Counsel

with copy to: Metro Knoxville HMA, LLC  
c/o Tennova Healthcare  
Turkey Creek Medical Center  
10820 Parkside Drive  
Knoxville, Tennessee 37934  
Attn: George T. Benton, Market CEO

with copy to Gentry Tipton & McLemore, P.C.  
(which shall not Riverview Tower  
constitute notice): 900 S. Gay Street, Suite 2300  
Knoxville, Tennessee 37902  
Attn: Greg D. Meadows, Esq.

If to Purchaser: City of Knoxville, Tennessee  
400 Main Street, Suite 699  
P.O. Box 1631  
Knoxville, Tennessee 37901  
Attn: Director of Law

Either party may change its address for Notices by giving written notice to the other party in accordance with this provision. Notices shall be deemed received: (i) if delivered by hand, on the date of delivery; (ii) if sent by certified U.S. Mail, five (5) days after the same is deposited with such carrier; and (iii) if sent by overnight delivery service, on the date the same is received.

11.02 Brokers. Seller and Purchaser each represents and warrants to the other that it has not dealt with any broker, brokerage firm, listing agent or finder in connection with the transaction contemplated by this Agreement.

11.03 Assignment & Successors. Purchaser shall not have the right to assign this Agreement, unless it obtains the prior written consent of Seller, which shall not be unreasonably withheld, conditioned or delayed if such assignment is to another public entity. In the event of any assignment of this Agreement, Purchaser shall remain primarily liable for all obligations of Purchaser hereunder. The terms of this Agreement shall be binding on Seller, Purchaser and their respective successors-in-interest.

11.04 Entire Agreement. This Agreement contains the final, complete and entire agreement of Seller and Purchaser with respect to the matters contained herein, and no prior agreement or understanding pertaining to such matters shall be effective for any purpose. This Agreement may only be amended by a written instrument signed by Purchaser and Seller.

11.05 No Offer. The submission of this Agreement by Seller shall not constitute an offer, and this Agreement shall become effective and binding only after it is executed and delivered by both Seller and Purchaser. Furthermore, copies of this Agreement that have not been executed and delivered by both Seller and Purchaser shall not serve as a memorandum or other writing evidencing an agreement between the parties.

11.06 Interpretation. FOR PURPOSES OF THIS AGREEMENT, TIME SHALL BE CONSIDERED OF THE ESSENCE. The titles, captions and section headings in this Agreement are for



convenience only and shall not define, limit or expand the scope of any provision hereof. Seller and Purchaser have agreed to the particular language of this Agreement, and any question regarding its meaning shall not be resolved by any rule providing for interpretation against the party who caused the uncertainty to exist or against the draftsman. In the event any words or phrases in this Agreement are stricken out or otherwise eliminated, whether or not any other words or phrases are added in their place, this Agreement shall be construed as though such words or phrases were never included herein and no inference shall be drawn therefrom. Unless the context indicates otherwise, (i) the terms "hereof", "hereunder" and "herein" refer to this Agreement as a whole, (ii) the singular includes the plural and the masculine gender includes the feminine and neuter, and (iii) all references to articles, sections and subsections refer to the articles, sections and subsections of this Agreement.

11.07 Counterparts. This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart even though no one (1) counterpart contains the signatures of all of the parties to this Agreement.

11.08 Delivery. Seller and Purchaser agree that executed copies of this Agreement may be delivered by facsimile or email (in PDF format), and the same shall have the same validity as if they were delivered in person.

11.09 Non-waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless it is expressed in writing and signed by the party charged with making the waiver. No delay or omission in the exercise of any right or remedy accruing upon a breach of this Agreement shall impair such right or remedy or be construed as a waiver of such breach. The waiver of any breach of this Agreement shall not be deemed to be a waiver of any other breach hereof.

11.10 Severability. This Agreement is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

11.11 Schedules/Exhibits. Purchaser and Seller acknowledge and agree that all schedules and exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

11.12 Attorneys' Fees. The prevailing party in any legal proceeding related to this Agreement shall be entitled to recover the reasonable court costs, litigation expenses and attorneys' fees that it incurs in connection with such legal proceeding from the non-prevailing party therein.

11.13 Business Days. If any date specified in this Agreement for the performance of an obligation, the delivery of an item, the giving of a notice or the expiration of a time period falls on a day other than a Business Day, then this Agreement shall be automatically revised so that such date falls on the next occurring Business Day.

11.14 Governing Law. This Agreement shall be governed by and construed under the laws of the State of Tennessee, without regard any conflict of law principles that might dictate that the laws of another jurisdiction should be applied.

11.15 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, SELLER AND PURCHASER HEREBY EXPRESSLY WAIVE THEIR RIGHT TO A TRIAL BY JURY OF ANY CLAIM (I) ARISING UNDER THE TRANSACTION DOCUMENTS, OR (II) CONNECTED WITH OR RELATED TO THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT, WHETHER NOW EXISTING OR

HEREAFTER ARISING. SELLER OR PURCHASER MAY FILE AN ORIGINAL OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE FOREGOING WAIVER.

11.16 Venue. PROPER VENUE FOR ANY ACTION ARISING UNDER OR RELATING TO ANY OF THE TRANSACTION DOCUMENTS OR THE TRANSACTION CONTEMPLATED THEREIN SHALL BE IN THE STATE AND FEDERAL COURTS HAVING JURISDICTION OVER KNOX COUNTY, TENNESSEE. ALL PARTIES HERETO CONSENT TO SUCH COURTS HAVING PERSONAL JURISDICTION AND WAIVE WHATEVER RIGHTS THEY HAVE TO BE SUED ELSEWHERE.

11.17 Period for Actions. To the maximum extent permitted under Legal Requirements, all claims and causes of action arising under any of the Transaction Documents or in connection with the transaction contemplated herein shall be brought prior to the earlier of the expiration of the applicable statute of limitations or two (2) years after the Closing Date; except claims and causes of action based on a breach of any of the representations and warranties set forth in ARTICLE V, which must be commenced within the period provided therein and an action for specific performance under Section 10.01, which must be commenced within the time period provided therein.

11.18 Restrictions. Purchaser acknowledges and agrees that prior to or at Closing, Seller shall place restrictions (the "Restrictions") on the Property that prohibit all or any portion of the Property from being used for the purposes of a full-service, acute care hospital (the "Prohibited Use"). The Restrictions shall remain in effect and enforceable until the earlier of: (a) the date Seller or any of its affiliates cease to own, lease, operate or occupy a full service, acute care hospital in Knoxville, Tennessee (the "Hospital") for a period of twelve (12) consecutive months, or (b) five (5) years after the Closing.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller and Purchaser have executed this Agreement as of the date appearing below their signatures on this page.

SELLER:

METRO KNOXVILLE HMA, LLC,  
a Tennessee limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CHARLES W. SWANSON  
LAW DIRECTOR

PURCHASER:

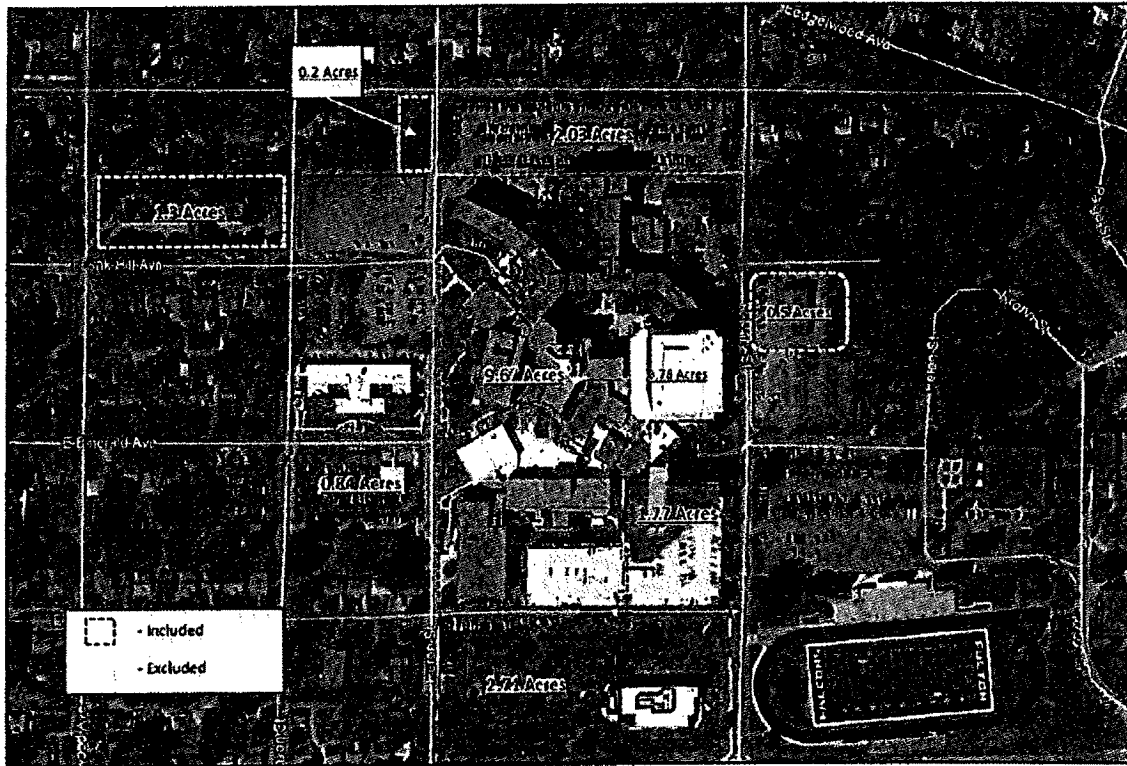
CITY OF KNOXVILLE

By: \_\_\_\_\_  
MADELINE ROGERO  
MAYOR

FUNDS CERTIFIED:

\_\_\_\_\_  
JAMES YORK  
LAW DIRECTOR

## DEPICTION OF REAL PROPERTY



## DESCRIPTION OF REAL PROPERTY

To be inserted from the Survey described in Section 3.02 upon delivery of such Survey

SCHEDULE 1.01(xxix)

SUBMISSION ITEMS

1. Any existing surveys of the Real Property.
2. Any existing environmental and physical inspection reports, studies and/or evaluations relating to the Real Property.
3. Any existing construction or manufacturer warranties related to the Real Property.
4. Any existing title policies for the Real Property.
5. Pleadings and related documents relating to any pending litigation, condemnation or other similar proceedings affecting the Property to which Seller is a party.
6. Any existing leases, easements or licenses entered into in connection with the Real Property with third parties.
7. Copies of original plans and specifications, including architectural, mechanical, electrical, plumbing, drainage, utility, construction and any similar plans, drawings, specifications and/or blueprints relating to the improvements located on the Property.
8. Any written notice of any material uncured violations or written warning of material uncured violations of any ordinances, restrictions, codes, regulations or any other governmental requirement including, but not limited to citations, notices or warnings issued by any governmental entity having competent jurisdiction thereof other than the City and received by Seller within the preceding two (2) years.

SCHEDULE 7.02-A

DEED

SPECIAL WARRANTY DEED

THIS INSTRUMENT PREPARED BY:

Greg D. Meadows, Esq.  
900 South Gay Street  
Suite 2300  
Knoxville, Tennessee 37902

\* OWNER/RESPONSIBLE TAXPAYER:

\* \_\_\_\_\_  
\* \_\_\_\_\_  
\* \_\_\_\_\_  
\* \_\_\_\_\_

\* Source of Grantor's Title:  
\* Deeds recorded as Instrument Nos.:  
\_\_\_\_\_

\* Tax Parcel: \_\_\_\_\_

I, or we, hereby swear or affirm that the actual consideration for this transfer or value of the property transferred, whichever is greater, is \$\_\_\_\_\_.00, which amount is equal to or greater than the amount which the property transferred would command at a fair and voluntary sale.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

THIS INDENTURE, made as of the \_\_\_\_ day of \_\_\_\_\_, 2019, between METRO KNOXVILLE HMA, LLC, a Tennessee limited liability company ("Grantor") and CITY OF KNOXVILLE, TENNESSEE, a municipal corporation organized and existing under the laws of the State of Tennessee ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten and no/100 Dollars (\$10.00) and for other good and valuable consideration in hand paid by Grantee, the receipt of which is hereby acknowledged, has granted, bargained, sold and conveyed, and does hereby grant, bargain, sell and convey unto Grantee the following described premises, with the hereditaments and appurtenances thereto appertaining, to-wit:

[PROPERTY DESCRIPTION and DERIVATION]

TO HAVE AND TO HOLD the Property to the said Grantee, its successors and assigns forever.

And Grantor does covenant with the said Grantee that Grantor is lawfully seized and possessed of said land in fee simple; has a good right to convey it, and the same is free from all encumbrances made or suffered by Grantor, except as listed on Exhibit A and representations and limitations as expressly provided for hereby.

And Grantor, for itself, its successors and assigns, does hereby covenant with Grantee, its representatives, successors and assigns, that Grantor will forever warrant and defend the title to the Property against the lawful claims of all persons claiming by, through or under Grantor, but not further or otherwise; and that such Property is free from all encumbrances except for those matters described on Exhibit A attached hereto.

THE PREPARER OF THIS DEED MAKES NO REPRESENTATION AS TO THE STATUS OF TITLE TO THE PROPERTY DESCRIBED ON EXHIBIT A HERETO. THIS DEED HAS BEEN PREPARED SOLELY FROM INFORMATION FURNISHED TO THE PREPARER WHO MAKES NO REPRESENTATION WHATSOEVER OTHER THAN IT HAS BEEN ACCURATELY TRANSCRIBED FROM THE INFORMATION PROVIDED. The terms "Grantor" and "Grantee" and any pronouns shall be read in the singular and plural number and in such gender as the context may require.

IN WITNESS WHEREOF, the Grantor has executed this instrument the date first above written.

**METRO KNOXVILLE HMA, LLC,**  
a Tennessee limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF TENNESSEE  
COUNTY OF \_\_\_\_\_

Before me, \_\_\_\_\_, of the State and County aforesaid, personally appeared Jason Price, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, swore to and acknowledged herself/himself to be \_\_\_\_\_ of Metro Knoxville HMA, LLC, the within-named bargainor, a Tennessee limited liability company, and that she/he as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by signing the name of the company by herself/himself as \_\_\_\_\_.

WITNESS my hand and seal at office in \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



**EXHIBIT A  
PERMITTED EXCEPTIONS**

**[To be added based upon Title Insurance Commitment]**

SCHEDULE 7.02-B

ASSIGNMENT OF INTANGIBLE PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PROPERTY (the "Assignment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_ (the "Effective Date"), by \_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Assignor"), for the benefit of \_\_\_\_\_, a \_\_\_\_\_ limited liability company ("Assignee").

WITNESSETH:

WHEREAS, Assignor and Assignee previously entered into that certain Purchase and Sale Agreement dated \_\_\_\_\_ (the "Sale Agreement"); and

WHEREAS, simultaneously with the execution of this Assignment, Assignor and Assignee are consummating the transaction contemplated by the Sale Agreement; and

WHEREAS, Assignor is are required to enter into this Assignment at the Closing under the terms of the Sale Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Defined Terms. For purposes of this Assignment, including, but not limited to, the foregoing recitals, all capitalized terms not defined herein shall have the meaning ascribed to them in the Sale Agreement.
2. Transfer. Assignor hereby assigns all of its right, title and interest in the Intangibles to Assignee. Except as otherwise expressly provided in the Sale Agreement, such Intangibles are being conveyed to Assignee "AS-IS, WHERE-IS", with all faults and without any representations, warranties, guaranties or assurances whatsoever, express or implied. Accordingly, the provisions of Section 6.01 of the Sale Agreement are incorporated into and shall be a part of this Assignment.
3. Governing Law. This Assignment shall be governed by the laws of the State of Tennessee.
4. Binding Effect. This Assignment shall be binding on Purchaser and its successors and assigns and shall inure to the benefit of Purchaser and its successors and assigns.
5. Exhibits. All exhibits referenced in this Assignment are incorporated herein by reference.
6. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Seller has caused this Assignment to be executed as of the day and year first above written.

ASSIGNOR:

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_

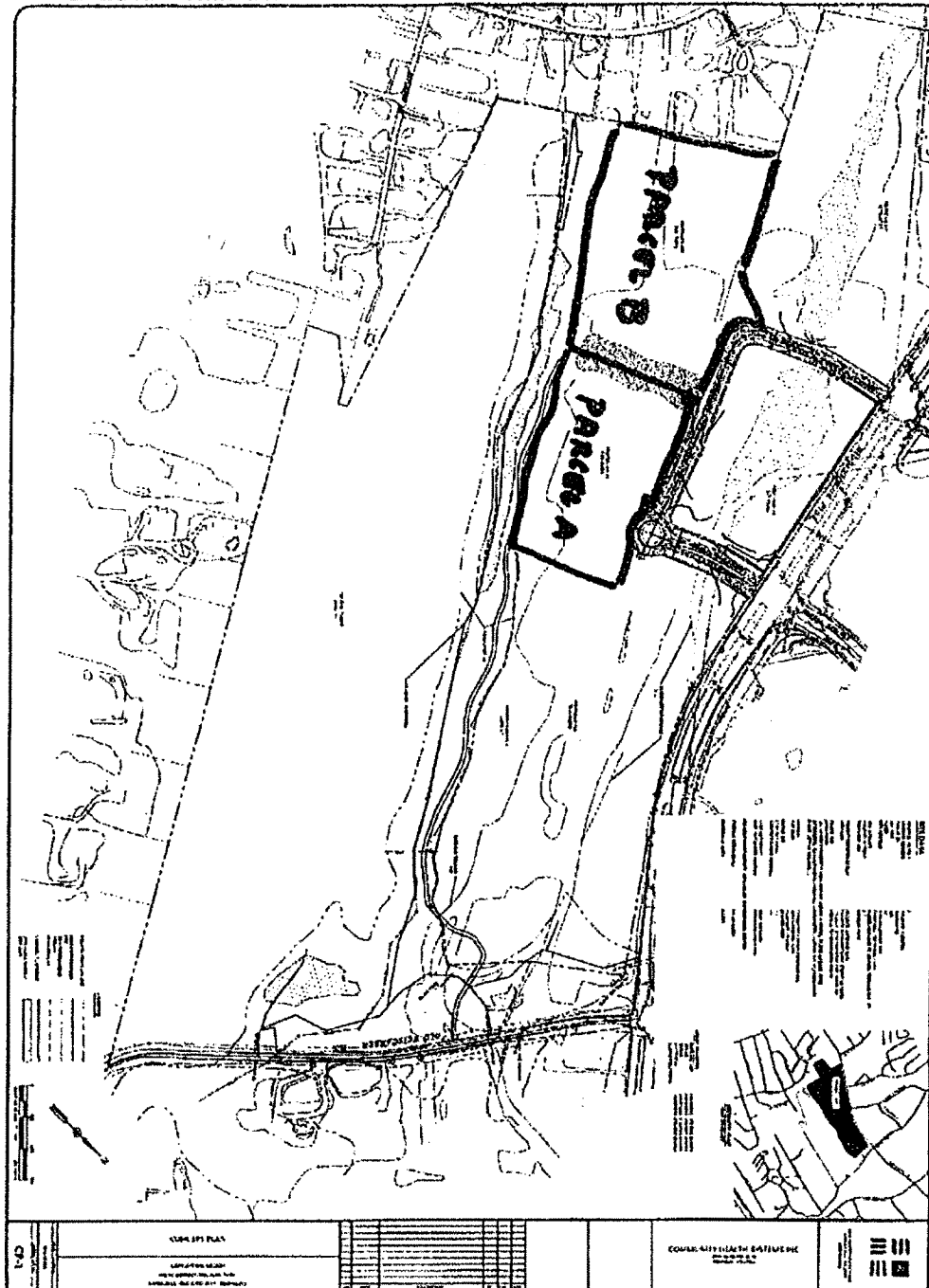
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SCHEDULE 7.03(b)(iv)-A

MIDDLEBROOK PROPERTY



SCHEDULE 7.03(b)(iv)-B

PILOT LEASE FORM

LEASE  
FROM  
THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF KNOXVILLE  
(a Tennessee public nonprofit corporation)

TO

METRO KNOXVILLE HMA, LLC

\_\_\_\_\_  
DATED AS OF \_\_\_\_\_, 2019

This Instrument Prepared By:  
R. Culver Schmid  
Baker, Donelson, Bearman, Caldwell &  
Berkowitz, P.C.  
265 Brookview Centre Way  
Suite 600  
Knoxville, TN 37919

## LEASE

This Lease, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KNOXVILLE**, a public nonprofit corporation organized and existing under the laws of the State of Tennessee ("Lessor"), and **METRO KNOXVILLE HMA, LLC**, a Tennessee limited liability company ("Lessee").

### WITNESSETH:

WHEREAS, Lessor is a public nonprofit corporation and a public instrumentality of the City of Knoxville, Tennessee, and is authorized under Sections 7-53-101 to 7-53-311, inclusive, Tennessee Code Annotated, as amended (the "Act"), to acquire, whether by purchase, exchange, gift, lease, or otherwise, and to own, lease and dispose of properties for certain purposes identified in the Act;

WHEREAS, in order to encourage Lessee to redevelop the real property subdivided into a single parcel located at \_\_\_\_ Middlebrook Pike, Knoxville, Tennessee, bearing Tax Parcel No. \_\_\_\_\_, and construct health care facilities thereon, furthering the purposes of the Act (including but not limited to Section 7-53-305 of the Act), Lessor desires to lease to Lessee and Lessee desires to rent from Lessor certain real property hereinafter more particularly described, on the terms and conditions set forth herein;

WHEREAS, the City Council of the City of Knoxville, Tennessee, authorized the Lessor to negotiate and accept from Lessee payments in lieu of ad-valorem taxes pursuant to Resolution No. R-\_\_\_\_-\_\_\_\_ approved \_\_\_\_\_, 20\_\_\_\_ (the "City Council Resolution");

WHEREAS, the Board of Directors of The Industrial Development Board of the City of Knoxville authorized the Lessor to execute and deliver this Lease pursuant to that certain Resolution of the Board of Directors of the Industrial Development Board of the City of Knoxville dated \_\_\_\_\_, 20\_\_\_\_ (the "IDB Resolution"); and

WHEREAS, in addition to this Lease, the Lessor has also entered into a similar payment in lieu of tax lease with \_\_\_\_\_, an affiliate of Lessee, pursuant to a Lease dated \_\_\_\_\_;

NOW, THEREFORE, Lessor, for and in consideration of the payments hereinafter stipulated to be made by Lessee, and the covenants and agreements hereinafter contained to be kept and performed by Lessee, does by these presents demise, lease and let unto Lessee, and Lessee does by these presents hire, lease and rent from Lessor, for the Term (as defined below) and upon the conditions hereinafter stated, the premises described in Exhibit A attached hereto, together with all facilities and improvements now existing or hereafter constructed thereon by Lessee or otherwise;

UNDER AND SUBJECT, however, to deed restrictions, covenants, easements, reservations, rights of way and other encumbrances existing as of the date hereof and any other encumbrance hereafter existing that is not created by Lessor; and

UNDER AND SUBJECT to the following terms and conditions:

## ARTICLE I

### DEFINITIONS

Section 1.01. In addition to the words, terms and phrases elsewhere defined in this Lease, the following words, terms and phrases as used in this Lease shall have the following respective meanings:

"Act" shall mean Sections 7-53-101 to 7-53-311, inclusive of Tennessee Code Annotated, as amended.

"Affiliate" shall mean any entity that directly or indirectly owns or controls, or is controlled by or under common control with, Lessee or an entity in which Lessee has a direct equity interest. For the purpose of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

"Bankruptcy Code" means 11 U.S.C. § 101-1330 or any successor statute.

"Basic Rent" shall mean the amounts described in Section 4.01.

"City Council Resolution" shall have the meaning stated in the Recitals of this Lease.

"Construction Completion Date" shall mean the date that is the earlier of (a) the first day of the next month following issuance of a Certificate of Occupancy for the Project, or (ii) five (5) years after the Effective Date.

"Construction Period" shall mean the period of time during which the Improvements are constructed, such period to begin upon the execution of the Lease and end on the Construction Completion Date.

"Costs of the Project" shall mean fair market value of the Leased Land and the costs of construction of the Improvements which the Lessee estimates are not less than \$\_\_\_\_\_ (as described in Article XI of this Lease).

"Effective Date" shall have the meaning provided in Article III herein.

"Event of Default" shall have the meaning provided in Article XIII herein.

"Health Care Facilities" shall mean health care and related containing approximately \_\_\_\_\_ square feet; provided, however, such facilities must at all times satisfy the definition of "Project" as defined in the Act.

"IDB Resolution" shall have the meaning stated in the Recitals of this Lease.



"Improvements" shall mean the health care facilities and related improvements to be constructed on the Leased Land; included but not limited to Health Care Facilities.

"Indemnified Parties" shall have the meaning stated in Section 10.02 of this Lease.

"Lease" shall mean this instrument as originally executed or as it may from time to time be supplemented or amended by one or more instruments supplemental hereto.

"Leased Land" shall mean the real property located at \_\_\_ Middlebrook Pike, Knoxville, Tennessee, which such property has been subdivided as Tax Parcel No. \_\_\_\_\_, and described in **Exhibit A** attached hereto, as adjusted pursuant to the terms of Section 5.04 of this Lease.

"Leased Premises" shall mean the Leased Land and Improvements together with any other buildings, improvements or fixtures constructed or to be constructed on the Leased Land.

"Lessee" shall mean Metro Knoxville HMA, LLC, or its successors and assigns as permitted herein.

"Lessee's Financing" shall mean, collectively, any financing for the construction of the Improvements, permanent financing upon completion of the Improvements and other financing in connection with the Project obtained by Lessee during the Term, as the same may be amended, modified, supplemented or restated.

"Lessor" shall mean The Industrial Development Board of the City of Knoxville, a Tennessee public nonprofit corporation.

"Loan" shall mean any existing or hereafter incurred indebtedness made to Lessee for construction or financing of the Improvements which is secured by this Lease.

"Mortgage Transfer Date" shall have the meaning stated in Section 12.02(f) of this Lease.

"New Lease" shall have the meaning stated in Section 12.02(e) of this Lease.

"Original Lessee" shall mean Metro Knoxville HMA, LLC or an Affiliate thereof.

**["Parcel B Lease" shall mean the Lease dated as of \_\_\_\_\_ by and between The Industrial Development Board of the City of Knoxville, as Lessor, and \_\_\_\_\_, as Lessee in connection with leased land and to be constructed improvements located at \_\_\_\_\_, and all amendments, modifications or restatements thereof.]**

"Project" shall mean real estate development project described herein which includes the Leased Land and the Improvements.

"Resolutions" shall mean the City Council Resolution and the IDB Resolution.

"Tax Year" shall mean each annual period beginning on January 1 of each year and ending on December 31 of that year.

"Term" shall mean the term described in Article III hereof.

"Transfer Requirements" shall have the meaning stated in Section 12.01(a) of this Lease.

## ARTICLE II

### REPRESENTATIONS AND COVENANTS OF LESSEE

Lessee makes the following representations, covenants and warranties to induce Lessor to enter into this Lease:

(a) Lessee is a limited liability company duly formed and existing under the laws of the State of Tennessee, authorized to conduct business in the State of Tennessee and is in good standing under Tennessee law, with full power and authority to enter into this Agreement and to perform all obligations contained herein and therein, and has, by proper action, been duly authorized to execute and deliver this Lease and, when executed and delivered by the parties thereto, this Lease will constitute the valid and binding obligation of Lessee enforceable in accordance with its terms.

(b) Neither the execution and delivery of this Lease, nor the consummation of the transactions contemplated herein by Lessee, nor the fulfillment of or compliance with the terms and conditions of this Lease, does or will conflict with or result in a breach of the terms, conditions or provisions of any restriction or internal governing document of Lessee or any agreement or instrument to which Lessee is now a party or by which it is bound, or any existing law, rule, regulation, judgment, order or decree to which it is subject, or constitutes a default under any of the foregoing or, except as contemplated hereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of Lessee under the terms of any instrument or agreement.

(c) There are no proceedings pending, or to the knowledge of Lessee threatened, against or affecting Lessee in any court or before any governmental authority, arbitration board or tribunal which affect the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of Lessee, or the ability of Lessee to perform its obligations under this Lease. Lessee is not in default with respect to an order of any court, governmental authority, arbitration board or tribunal.

(d) No event has occurred and no condition exists with respect to Lessee that would constitute an Event of Default under this Lease, or which, with the lapse of time or with the giving of notice, or both, would become such an Event of Default.

(e) Except as indicated in that certain \_\_\_\_\_ [PHASE I ESA] \_\_\_\_\_, to the best of Lessee's actual knowledge, there are no substances, materials, wastes, pollutants or contaminants located on the Leased Premises that are regulated under any environmental law or regulation except those materials and substances that are maintained in compliance with such laws and regulations, and Lessee shall not permit any such

substances, materials, wastes, pollutants or contaminants to exist on the Leased Premises during the Term of this Lease except in compliance with such laws and regulations.

(f) Lessee commits to construct the Health Care Facilities on the Leased Land on or before the Construction Completion Date.

(g) No portion of the Health Care Facilities or the Leased Land will be used for as a "Retail business" within the meaning of the Act, without the prior written consent of the City Council of the City of Knoxville and the County Commission of Knox County, Tennessee.

### ARTICLE III

#### LEASE TERM

Subject to the provisions contained in this Lease, this Lease shall be in full force and effect for a Term commencing on the date hereof (the "Effective Date") and ending fifteen (15) years after the Construction Completion Date, unless previously terminated as provided below. Within thirty (30) after the Construction Completion Date, Lessor and Lessee shall execute and deliver a lease commencement agreement, in form reasonably acceptable to each party, defining the exact term of the Lease and the exact amount of the PILOT Payments pursuant to Section 7.04(a).

### ARTICLE IV

#### RENT

Section 4.01. Basic Rent. Lessee will pay to Lessor without notice or demand, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, as Basic Rent: (a) a closing fee of \$35,000.00; and (b) the first installment of annual rent in the amount of \$100.00 (with subsequent installments of annual rent to be paid on or before each anniversary of the Effective Date throughout the Term); (c) an annual maintenance fee of \$2,000.00 which shall be paid at commencement of the Lease and thereafter within thirty (30) days after written notice from Lessor to Lessee given on or about each anniversary of the Effective Date throughout the term and (c) all costs and expenses incurred by Lessor in connection with its obligations described herein including but not limited to reasonable attorney fees and out-of-pocket expenses incurred by Lessor prior to the Effective Date in connection with this Lease.

Section 4.02. Additional Rent.

(a) Lessee agrees, as additional rent, to complete the construction of the Improvements contemplated in Article XI of this Lease on or before the Construction Completion Date and to pay all other amounts, liabilities and obligations which Lessee herein assumes or agrees to pay.

(b) Lessee shall also pay as additional rent the payments in lieu of taxes described in Section 7.04 hereof.

(c) Without limiting the foregoing, Lessor and Lessee recognize that the Leased Premises have been conveyed to Lessor subject to the encumbrances more particularly described

in **Exhibit B** hereto. Lessee agrees to make all payments of debt service relating to the Loans and such payments shall constitute additional rent hereunder.

## ARTICLE V

### COMPLIANCE WITH LAWS; PERMITTED CONTESTS; LESSEE'S ACCEPTANCE OF LEASED PREMISES

**Section 5.01. Compliance with Laws.** Lessee shall throughout the Term and at no expense to Lessor promptly cure any violations under all laws, ordinances, orders, rules, regulations and requirements of duly constituted public authorities, which are or shall become applicable to the Leased Premises, the repair and alteration thereof, and the use or manner of use of the Leased Premises, whether or not such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not they shall involve any change of governmental policy or shall require structural or extraordinary repairs, alterations or additions, irrespective of the cost thereof; provided, however, that Lessee, in lieu of compliance with such laws, orders, rules, regulations and requirements, or the making of such additions, changes or alterations, may, at its option, exercise its right to purchase the Leased Premises, pursuant to **Section 14.01** below and, in such event shall have no further liability hereunder.

**Section 5.02. Permitted Contests.** Lessee shall not be required to comply or cause compliance with the laws, ordinances, orders, rules, regulations or requirements referenced in **Section 5.01**, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

**Section 5.03. Acceptance of Leased Premises.** Lessee acknowledges that (a) it has examined the Project described in **Exhibit A** attached hereto and the state of Lessor's title thereto prior to the making of this Lease and knows the condition and state thereof, including, without limitation, the environmental and soil conditions, as of the first day of the term of this Lease; (b) it accepts the same in said condition; (c) no representations as to the condition or state thereof have been made by representatives of Lessor; and (d) in entering into this Lease, Lessee is relying solely upon its own examination thereof.

**Section 5.04. Adjustments to Leased Premises.** The parties acknowledge that Lessee may desire to adjust the boundaries of the Leased Land prior to the Construction Completion Date in order to facilitate development of the Project. Lessor agrees cooperate and assist with any such requested boundary adjustment, at Lessee's sole cost, between the Effective Date and the Construction Completion Date, and to execute any required amendments to this Lease to reflect such revisions to the Leased Land. In the event of such alteration, (A) Lessee shall convey to Lessor additional land to be included as part of the Leased Land, and Lessor agrees to acquire such

additional property and incorporate such additional land as part of the Leased Land, and (B) Lessor at the request of Lessee shall convey to Lessee any portion of the Leased Land which Lessee determines is not necessary to facilitate the development of the Project. Notwithstanding the foregoing, Lessee acknowledges and agrees that Lessor's obligation to assist with any such requested revisions is subject to Lessee obtaining prior written approval from the City of Knoxville for any such adjustment to the Leased Premises (i) if the acreage of the Leased Land increases by more than 30% or (ii) if the primary purpose of the Health Care Facilities changes during the Construction Period.

## ARTICLE VI

### TITLE AND TAX BENEFITS

Section 6.01. No Conveyance of Title by Lessor. Lessor covenants and agrees that, except as set forth herein, during the Term of this Lease, it will not convey, or suffer or permit the conveyance of, by any voluntary act on its part, its title to the Leased Premises to any person, firm, corporation, or other entity whatsoever, irrespective of whether any such conveyance or attempted conveyance shall recite that it is expressly subject to the terms of this Lease unless such conveyance is consented to, in writing, by Lessee. Lessor will not create any lien, encumbrance or charge upon its interest in the Leased Premises except for any such lien, encumbrance or charge otherwise created by this Lease or consented to, in writing, by Lessee.

Section 6.02. Tax Benefits. During the Term, Lessee shall be entitled to all benefits under federal and state tax laws attributable to the ownership of the Leased Premises, including, without limitation, the right to claim deductions for depreciation and the right to claim any tax credits attributable to the Leased Premises.

## ARTICLE VII

### TAXES AND OTHER CHARGES

Section 7.01. Taxes and Other Governmental Charges. Lessee agrees, subject to the provisions of Section 7.04, to pay and discharge, as additional rent, punctually as and when the same shall become due and payable without penalty, all ad valorem taxes that at any time from the date hereof and during the Term shall be or become due and payable by Lessor or Lessee and that shall be levied, assessed or imposed upon, or that shall be or become liens upon, the Leased Premises or any portion thereof or any interest of Lessor or Lessee therein, under and by virtue of any present or future law, statute, regulation or other requirement of any governmental authority.

Section 7.02. Lessee Subrogated to Lessor's Rights. To the extent of any payments of additional rent by Lessee under this Article VII, Lessee shall be subrogated to Lessor's rights in respect to the proceedings or matters relating to such payments, and any recovery in such proceedings or matter shall be used to reimburse Lessee for the amount of such additional rent so paid by Lessee.

Section 7.03. Utility Services. Lessee agrees that Lessor is not, nor shall it be, required to furnish to Lessee or any other user of the Leased Premises any gas, water, sewer, electricity, light, heat, power or any other facilities, equipment, labor, materials or services of any kind and Lessee agrees that it shall pay all costs and expenses related to the foregoing.

Section 7.04. Payments in Lieu of Taxes.

(a) PILOT Payments. Lessee recognizes that under present law, including specifically Section 7-53-305 of the Act, the properties owned by Lessor are exempt from all taxation in the State of Tennessee. However, as long as this Lease is in effect, Lessee agrees to make payments in lieu of taxes to the City of Knoxville, Tennessee and Knox County, Tennessee in accordance with the provisions of this Section 7.04. From the Effective Date until the end of the Term of the Lease, Lessee shall make annual payments in lieu of taxes to the City of Knoxville and Knox County equal to the amount which were due and payable with respect to the Leased Premises for tax year 2018 (based upon a prorated allocation of the taxes for the parcel of which the Leased Premises are a part based upon acreage).

(b) First Tax Year and Final Tax Year. For (1) the Tax Year in which this Lease is executed and for (2) the Tax Year in which the Term expires or is earlier terminated (each such year referred to hereinafter as a "Partial Tax Year") where the Leased Premises are owned by Lessee for part of such Tax Year and by Lessor for part of such Tax Year, Lessee shall pay to the City of Knoxville and Knox County, respectively, for the Leased Premises (i) to the extent unpaid as of the Effective Date hereof, a prorated portion of the property taxes due with respect to the Leased Premises for the Partial Tax Year for the period of the Partial Tax Year that the Leased Premises were not owned by Lessor plus (ii) a prorated portion of the PILOT payments due with respect to the Leased Premises for the portion of the Partial Tax Year when the Leased Premises were owned by Lessor.

(c) Full Tax Years. For each full Tax Year after the Effective Date hereof throughout the Term, Lessee shall make an annual payment in lieu of taxes on behalf of Lessor as set forth in Section 7.04(a) and Section 7.04(d) herein. Thereafter, if this Lease remains in effect, Lessee shall make a payment in lieu of taxes with respect to each Tax Year on behalf of Lessor to the City of Knoxville, Tennessee and Knox County, Tennessee in an amount equal to the ad valorem taxes which would otherwise be payable with respect to the Leased Premises if such Leased Premises were owned by Lessee. Any additional payment in lieu of tax paid pursuant to this paragraph shall be divided between the City of Knoxville and Knox County in the same proportion that each of their property tax rates bear to the total property tax rates of the City of Knoxville and Knox County.

(d) Aggregate Tax Savings. Once the difference between (i) the aggregate of ad valorem taxes which otherwise would have been payable with respect to the Leased Premises and the premises leased under the Parcel B Lease (if such Leased Premises and the premises leased under Parcel B Lease were owned by such lessees as private taxpayers rather than governmental entities), and (ii) the payments in lieu of taxes paid under this Lease and the Parcel B Lease, equals \$16,000,000 in the aggregate (such amount referred to hereinafter as the "Aggregate Tax Savings"), the payments in lieu of taxes required to be paid by Lessee described in this Section 7.04 shall equal the amounts of the ad valorem taxes which would otherwise be payable with

respect to the Leased Premises if such Leased Premises were owned by Lessee and not owned by Lessor notwithstanding any provision herein to the contrary. If Aggregate Tax Savings is reached in a Tax Year, Lessee and the lessee under the Parcel B Lease shall be permitted to make payments in lieu of taxes in the reduced amounts provided herein and therein until to the Aggregate Tax Savings are achieved and thereafter Lessee shall pay any difference as a payment in lieu of tax with respect to the Leased Premises as required by this subsection.

(e) Maximum Tax Payment. Nothing contained in this Section 7.04 is intended or shall be construed to require the payment by Lessee of any greater amounts in lieu of taxes than would be payable as taxes if the Leased Premises were owned by Lessee. It is accordingly understood and agreed that the amount payable by Lessee in any year under the provisions of this Section 7.04 shall be reduced (1) by the amount of any ad valorem taxes lawfully levied upon the Leased Premises or any part thereof, or upon Lessee's leasehold estate therein, and actually paid by Lessee to the City of Knoxville or Knox County pursuant to the requirements of Section 7.01 hereof and (2) to the extent that any such tax payments paid by Lessee pursuant to the requirements of Section 7.01 hereof for any year shall exceed the in-lieu-of-tax payments for such year otherwise provided in this Section 7.04 the amount payable by Lessee in any subsequent year under the provisions of this Section 7.04 shall be reduced by such excess amount.

(f) Valuation and Assessment. In furtherance of the agreements in this Section, it is agreed by and between the parties hereto that Lessee in cooperation with Lessor shall cause the Leased Premises to be valued and assessed by the assessor or other official or officials charged with the responsibility of assessing privately owned commercial property in the area where the Leased Premises are located at the time such privately owned property is valued or assessed. Lessee in cooperation with Lessor (i) shall cause to be applied to the appropriate taxable value of the Leased Premises the tax rate or rates that would be applicable for state and local tax purposes if the property were then privately owned, and (ii) shall cause the county trustee or other official or officials charged with the responsibility of collecting taxes to submit annually to Lessee a statement of the taxes which would otherwise then be chargeable to the Leased Premises. The right is reserved to Lessee to the same extent as if Lessee were the owner of the Leased Premises to contest the validity or amount of any such assessment.

(g) Time of Payment. The tax payments and in lieu of tax payments owed for the First Tax Year, if they can be determined, shall be paid at the time of the commencement of this Lease. Thereafter, each payment in lieu of taxes required by this Section 7.04 (other than those described in the third paragraph above) shall be due on or before (i) February 28 following the Tax Year with respect to which each such payment relates; and (ii) for the final Tax Year of the Term, payments in lieu of tax payments required by this Lease, and payments of taxes owed for the remainder of the Tax Year after termination of this Lease, shall be due and payable on the last day of the Term. The obligation to make any payment in lieu of taxes with respect to any Tax Year shall survive the termination of this Lease.

(h) Tax on Additional Improvements. The payments in lieu of taxes payable hereunder shall only apply to the Leased Land and the Improvements thereon as constructed pursuant to Article XI hereof. In the event Lessee constructs improvements on the Leased Land other than the Improvements described in Article XI hereof, Lessee shall make payments in lieu of taxes to the appropriate taxing jurisdictions with respect to such additional improvements in an amount equal

to the ad valorem taxes that would otherwise be payable by Lessee if Lessee was the owner of such additional improvements unless the parties hereto agree in writing to the contrary.

Section 7.05. Permitted Contests. Lessee shall not be required to pay any tax or assessment against the Leased Premises or any part thereof, so long as Lessee shall, at Lessee's expense, contest the same or the validity thereof in good faith, by appropriate proceedings which shall operate to prevent the collection of the tax or assessment so contested or resulting from such contest and the sale of the Leased Premises or any part thereof to satisfy the same. Such contest may be made by Lessee in the name of Lessor or of Lessee, or both, as Lessee shall determine, and Lessor agrees that it will, at Lessee's expense, cooperate with Lessee in any such contest to such extent as Lessee may reasonably request. It is understood, however, that Lessor shall not be subject to any liability for the payment of any costs or expenses (including attorneys' fees) in connection with any such proceeding brought by Lessee, and Lessee covenants to pay, and to indemnify and save harmless Lessor from, any such costs or expenses.

## ARTICLE VIII

### MAINTENANCE AND REPAIR

Lessor shall not be required to rebuild or to make any repairs, replacements or renewals of any nature or description to the Leased Premises or to make any expenditures whatsoever in connection with this Lease or to maintain the Leased Premises in any way. Lessee expressly waives the right contained in any law now or hereafter in effect to make any repairs at the expense of Lessor.

Except as provided in the next paragraph, Lessee shall keep and maintain in good order, condition and repair (including any such repair as is required due to fire, storm or other casualty) the Leased Premises and every part thereof and any and all appurtenances thereto. Lessee shall save Lessor harmless on account of claims for mechanics, materialmen's or other liens in connection with any work by Lessee, and any such liens shall exist only against Lessee's leasehold interest and shall be discharged, by bond or otherwise, within sixty (60) days after filing. Lessee shall keep and maintain the Leased Premises in accordance with all directions, rules and regulations of the proper officials of the government agencies having jurisdiction, at the sole cost and expense of Lessee.

In the event the Improvements are destroyed or substantially damaged by fire, storm or other casualty, Lessee shall not be required to rebuild the Improvements on the Leased Premises. In the event Lessee does not elect to rebuild the Improvements on the Leased Premises in such a case, Lessee shall within a reasonable period of time not to exceed one hundred eighty (180) days after such casualty (a) remove all rubble, debris, materials and any remaining improvements on the Leased Premises so that the Leased Premises are in good condition and would be ready to develop with other improvements, and (b) exercise the option to purchase described in Section 14.01 of this Lease.



## ARTICLE IX

### CONDEMNATION

If during the Term, all or any part of the Leased Premises be taken by the exercise of the power of eminent domain or condemnation, Lessee shall be entitled to and shall receive the entire award for the taking regardless of whether such taking or condemnation results in the termination of this Lease. If title to or control of all of the Leased Premises shall be taken by the exercise of the power of eminent domain or condemnation, or if such use or control of a substantial part of the Leased Premises shall be taken, and as a result Lessee reasonably determines that the remainder of the Leased Premises is no longer suitable for Lessee's then intended use thereof or the operation of the businesses then located on the Leased Premises is no longer economically feasible, Lessee may terminate this Lease by giving written notice to the Lessor. Such termination, however, will be without prejudice to the rights of Lessee to recover from the condemnor compensation and damage caused by such condemnation or taking. Notwithstanding the foregoing or anything to the contrary in this Lease, in the event all or any part of the Leased Premises are taken by the exercise of the power of eminent domain or condemnation, the condemnation award shall be applied as provided in any mortgage (or deed of trust) pursuant to which Lessee has mortgaged the Leased Premises.

## ARTICLE X

### INSURANCE, INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 10.01. Insurance. Lessee shall carry commercial public liability insurance covering the Leased Premises and the use and occupancy of the same in a company or companies licensed to do business in Tennessee under a policy reasonably satisfactory to Lessor both as to amount and coverage and shall provide evidence of same to Lessor. Lessor shall be listed as an additional insured on such policy. Lessee shall also insure all improvements on the Leased Premises at their full replacement value, with Lessor being included as an additional insured, and Lessee shall provide evidence of same to Lessor. Any insurance proceeds from such insurance shall be applied as provided in any deed of trust pursuant to which Lessee has mortgaged the Leased Premises; provided, however, such application shall not excuse performance by Lessee of Lessee's obligations under Article VIII and provided, further, except as may be provided in such deed of trust, Lessee shall be deemed the owner of and shall be entitled to the receipt of all such insurance proceeds. Each policy described above shall contain a provision that it may not be canceled without first giving Lessor not less than thirty (30) days prior written notice.

Section 10.02. Indemnification. Lessee covenants and agrees, at its expense, to pay, and to indemnify and save Lessor and its directors, agents and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising from the occupation, use, possession, conduct or management of or from any work or activity done in or about the Leased Premises or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Leased Premises or the occupancy or use thereof. Lessee also covenants and agrees, at its expense, to pay, and to indemnify and save the Indemnified Parties harmless against and from, any and all claims, costs or expenses arising

from (i) any condition, including any environmental condition, now existing or hereafter arising, on the Leased Premises, (ii) any breach or default on the part of Lessee in the performance of any covenant or agreement to be performed by Lessee pursuant to this Lease, (iii) any act or negligence of Lessee, or any of its agents, contractors, servants, employees or licensees, or (iv) any accident, injury or damage whatever caused to any person, firm or corporation in or about the Leased Premises and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section. In the event that any action or proceeding is brought against any Indemnified Party by reason of any such claims, Lessee, upon notice from such Indemnified Party, covenants to resist or defend such action or proceeding. The indemnification provided shall survive termination of this Lease.

**Section 10.03. Limitation of Liability.** This Lease and the obligations of Lessor hereunder shall be non-recourse as to Lessor, and Lessor shall have absolutely no personal or individual liability with respect to any of the terms, covenants and conditions of this Lease. Lessee hereby expressly agrees that it shall look solely to the equity of Lessor or its successor(s) interest in the Leased Premises for the satisfaction of any remedy of Lessee in the event of any breach by Lessor of any of the terms, covenants and conditions of this Lease. This exculpation of Lessor's personal liability is absolute and without any exception whatsoever. Lessee acknowledges that Lessor is a governmental entity and is subject to the protection of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated § 29-20-101 through 29-20-408 (as amended from time to time), and nothing contained herein shall constitute a waiver or release of Lessor's rights and protections under said Act.

## **ARTICLE XI**

### **CONSTRUCTION OF IMPROVEMENTS; ALTERATIONS**

Lessee agrees to construct the Improvements on or before the Construction Completion Date and use the Leased Premises for the Health Care Facilities and no other purpose unless permitted in writing by the City of Knoxville.

Lessee also agrees to develop the Project pursuant to schematic designs provided by Lessee to Lessor and approved by the City of Knoxville. Lessor and Lessee acknowledge that the schematic designs for the development and construction of the Improvements may not be completed as of the Effective Date, and if not completed, Lessee agrees to submit such schematic designs to the City of Knoxville for approval and provide a copy to Lessor.

Lessee shall have the right to construct buildings and other improvements on the Leased Land from time to time and to make additions to and alterations of any such buildings and improvements and any existing buildings and Improvements. All work done in connection with such additions, alterations, improvements or construction shall be done promptly, and in good and workmanlike manner, and in compliance with all laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments and the appropriate departments, commissions, boards and offices thereof. Lessee shall maintain or cause to be maintained, at all times when any work is in process in connection with such additions, alterations, improvements or construction, workmen's compensation insurance covering all persons employed in connection

with such work and with respect to whom death or bodily injury claims could be asserted against Lessor, Lessee or the Leased Premises.

Lessee covenants and agrees the Costs of the Project shall not be less than \$\_\_\_\_\_. It is understood and agreed that such facility, together with all other improvements or fixtures from time to time placed on the Leased Land, shall become the property of Lessor and part of the Leased Premises. The cost of the construction of the Improvements shall be treated as additional rent payable by Lessee under this Lease. Lessee shall provide to Lessor evidence of the completion of the Project, and spending of anticipated Costs of the Project, in a form reasonably required by Lessor, including, but not limited to, the form attached hereto as Exhibit D.

## ARTICLE XII

### SUBLETTING, ASSIGNMENTS AND MORTGAGING

#### Section 12.01. Assignment, Subletting and Change of Ownership.

(a) Lessee shall not have the right to assign or otherwise transfer its rights and interest hereunder except with the prior written consent of Lessor or as explicitly permitted in this Lease Agreement. Notwithstanding the foregoing, Lessor shall, within thirty (30) days of Lessee's written request for Lessor's consent, consent to any assignment, transfer, conveyance, hypothecation or encumbrance of (x) Lessee's rights and interest in the Leased Premises or this Lease or (y) ownership interests in the Lessee (including by way of a merger, reorganization, or sale of all or substantially all of the assets or ownership interests of Lessee or otherwise), if and to the extent such proposed assignee, in the reasonable opinion of Lessor, satisfies the following criteria (collectively the "Transfer Requirements"):

(1) such assignee utilizes the Leased Premises for the purpose of the development and/or operation of the Project during the Term,

(2) such assignee or its owner either (A) is an Affiliate of Original Lessee, (B) engages Original Lessee in the active operation of the Project through the Term pursuant to a lease, management contract, or other comparable arrangement which comparable arrangement is reasonably acceptable to the City of Knoxville, or (C) is, or engages, a reputable and experienced developer, manager or owner of commercial/retail developments and, only in the case of a transfer of the Leased Premises, the assignee is of such financial standing and operational responsibility as to give reasonable assurance of the payment of all rental and other amounts reserved in this Lease and compliance with all of the terms, covenants, provisions and conditions of this Lease as reasonably determined by the City of Knoxville,

(3) such assignee constructs and/or operates the Leased Premises consistent with the terms of the Resolutions as determined by the Lessor in its reasonable discretion, and Lessee at all times may assign its interest in the Lease to Affiliates of Lessee, and

(4) where the assignee is unrelated to Lessee, and if such assignment occurs during the first three (3) years after the Construction Completion Date, Lessee shall demonstrate to the reasonable satisfaction of the City of Knoxville or the Lessor that Original Lessee will have

an active involvement in the operations of the Leased Land, such involvement to include, but not be limited to, a lease, management contract, ownership interest or similar arrangement through the period of time that is three (3) years after the Construction Completion Date.

(b) Lessee may sublet the Lease Premises or any part thereof to Original Lessee or any entity in which Original Lessee has an interest consistent with the purposes and uses of the development and/or operation of the Project as set forth in this Lease and the Resolutions, without any requirement to obtain the consent of Lessor or the City of Knoxville. Further, Lessee may sublet up to an aggregate of forty-nine percent (49%) of the leaseable area of the Improvements to third parties consistent with the purposes of uses of the development and/or operation of the Project as set forth in this Lease and the Resolutions, without any requirement to obtain the consent of Lessor or the City of Knoxville.

(c) Notwithstanding anything to the contrary contained herein, in no event shall Lessee have any liability hereunder from and after the date that Lessee transfers its interests in and to the Leased Premises pursuant to Section 12.01(a), excepting such monetary obligations of Lessee as accrued prior to the date of such transfer.

(d) Lessor shall consent or withhold such consent by written notice to Lessee within ninety (90) days of Lessee's written request for Lessor's consent or such earlier date of the next regularly scheduled meeting of the Board of Lessor after written request of Lessee and sufficient time for satisfying all notice, publication and other requirements necessary for the Board to consider such matter.

(e) Notwithstanding anything in Section 12.01(a) to the contrary, following the Construction Completion Date, so long as Original Lessee (or its affiliates) is operating the Project as a subtenant pursuant to Section 12.01(b), then the Lessee shall be able to freely assign this Lease Agreement.

#### Section 12.02. Lessee's Financing.

(a) Notwithstanding anything to the contrary contained in the Lease, Lessee is hereby given the right, at any time and from time to time, to mortgage its leasehold estate in the Leased Premises, provided that any such leasehold mortgage shall be subject and subordinate to the rights of Lessor hereunder except as provided herein. As used in this Section and throughout this Lease, (1) the noun "mortgage" shall include a deed to secure debt, mortgage or deed of trust secured by the leasehold estate created by this Lease, as the same may be amended, modified, supplemented or restated; (2) the verb "mortgage" shall include the creation of a deed to secure debt, mortgage or deed of trust secured by the leasehold estate created by this Lease; (3) the word "mortgagee" shall include the holder of a mortgage, and any party that succeeds to Lessee's interest in the Leased Premises as the result of a foreclosure (as hereafter defined), together with their respective successors and assigns; and (4) the terms "foreclose" or "foreclosure" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process, any other exercise by a mortgagee of rights and remedies (whether under a mortgage or under applicable law, including bankruptcy law) as holder of the mortgage and/or the loan evidenced thereby, or delivery by Lessee to a

mortgagee of a conveyance of Lessee's interest in the Leased Premises in lieu of any of the foregoing.

(b) Lessor specifically consents to the Lessee's Financing, which Lessor hereby acknowledges and agrees may consist of one or more loans. In connection with Lessee's Financing, Lessor, within ten (10) business days of Lessee's written request therefor, shall execute, acknowledge and deliver to any mortgagee (i) a joinder agreement, in the form attached hereto as Exhibit C, and (ii) an agreement or estoppel, in form reasonably satisfactory to such mortgagee and Lessor and consistent with industry standards, by and among Lessor, Lessee and such mortgagee, (a) agreeing to all of the provisions of this Section 12.02, (b) confirming that Lessee's mortgagee shall be entitled to the benefit of such provisions and (c) providing such certifications, representations and warranties that Lessee's mortgage may reasonably require. In addition, Lessor and Lessee acknowledge that such agreement may contain such reasonable modifications to this Lease as may be required by Lessee's mortgagee, provided that such modifications (1) do not reduce Lessee's monetary obligations under this Lease; (2) are consistent with the Project authorized by the Resolutions; and (3) do not adversely affect any other rights of Lessor under this Lease in any material respect.

(c) If, from time to time, Lessee shall encumber this Lease with a mortgage and for so long as such mortgage shall remain unsatisfied, the following provisions shall apply and, to the extent the same are inconsistent with any other provisions of this Lease, the following provisions shall govern and control:

(1) Mortgagee shall execute and deliver to Lessor an estoppel agreement in a form and substance reasonably acceptable to Lessor and mortgagee to confirm such mortgagee's consent to the terms and conditions of this Section 12.02.

(2) If a mortgagee shall have given Lessor a written notice specifying the name and mailing address of such mortgagee, then Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the mortgagee (i) a copy of its written notice to Lessee of such Event of Default containing a statement of Lessor's intent to exercise its rights hereunder addressed to the mailing address last furnished by the mortgagee, and (ii) the opportunity to cure such Event(s) of Default, as follows: Lessee's mortgagee shall be entitled to cure any stated Event of Default for a period of sixty (60) days after receipt of Lessor's written notice, provided that if the Event of Default is non-monetary in nature and is of such a nature that it is not reasonably susceptible of cure within said sixty (60) day period then, provided Lessee's mortgagee has commenced to cure such Event of Default within such sixty (60) day period and thereafter prosecutes the same to completion with reasonable diligence, Lessee's mortgagee shall be entitled to such additional time as is reasonably necessary to cure such Event of Default. If Lessee's mortgagee cures all stated Events of Default in accordance with the foregoing provisions, then both the notice of Events of Default given to Lessee (with a copy to each mortgagee) shall be deemed satisfied, and of no further force or effect. Lessor agrees to accept performance of Lessee's obligations hereunder by any mortgagee with the same force and effect as though

observed or performed by Lessee. Lessee's mortgagee shall have the right to enter upon the Leased Premises for the purpose of remedying any such default.

(3) If any mortgagee determines that, in order to cure any Event of Default, possession of, or title to, the leasehold estate of Lessee hereunder is required or if the Event of Default is of such a nature that it is not reasonably susceptible of cure by mortgagee, then Lessor shall not be entitled to exercise any of its remedies provided that: (i) such mortgagee notifies Lessor within the sixty (60) day cure period afforded the mortgagee that it intends to acquire possession of, or title to, the leasehold estate; (ii) such mortgagee cures any Event(s) of Default and performs any of Lessee's obligations under this Lease which are reasonably susceptible of being cured or performed by the mortgagee prior to having gained possession of, or title to, the leasehold estate; and (iii) the mortgagee takes steps promptly to acquire Lessee's interest in this Lease by foreclosure or otherwise and prosecutes the same to completion with reasonable diligence, except to the extent enjoined or stayed. Upon completion of the conveyance of Lessee's leasehold interest hereunder by foreclosure or otherwise, this Lease shall, subject to the provisions of Section 12.02(f), continue in full force and effect as a Lease between Lessor and the mortgagee, its designee or the purchaser of the leasehold estate in any foreclosure proceedings, and the mortgagee, its designee or such purchaser shall with due diligence cure any remaining Event of Default which is reasonably susceptible of being cured.

(4) Nothing contained herein shall require the mortgagee, as a condition to its exercise of any of its rights hereunder, to cure any Event of Default not reasonably susceptible of being cured by the mortgagee, including but not limited to, an Event of Default based upon the bankruptcy or insolvency of Lessee or the past occurrence of an act or the omission thereof which, in and of itself, is or would constitute an Event of Default. The mortgagee shall not be required to continue such foreclosure or other steps in the event that the stated Event of Default is cured. If the stated Event of Default is cured and the mortgagee discontinues such foreclosure or other steps, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease. Any nonmonetary default not susceptible of being cured by the mortgagee, including, without limitation, the bankruptcy or insolvency of Lessee or the past occurrence of an act or the omission thereof which, in and of itself, is or would constitute an Event of Default, shall be and shall be deemed to have been waived by Lessor upon completion of the foreclosure. It is understood and agreed that construction of the Improvements in accordance with Article XI and payment of Basic Rent and Additional Rent are and shall be deemed to be defaults which are susceptible to cure by a mortgagee (subject, as necessary, to obtaining title to the Project), provided, however, Lessor acknowledges and agrees that any required time frame for completion of the Improvements and/or operation of the Project shall be deemed tolled for an amount of time equal to the time between the date of such Event of Default and the date such mortgagee (or its assignee or designee) shall have acquired title to the Project plus such additional time as be reasonably necessary for the mortgagee to comply

with the developmental or operational requirements of this Lease so long as mortgagee is diligently pursuing the steps necessary to achieve such compliance.

(5) If Lessor shall elect to terminate this Lease by reason of any Event of Default, Lessee's mortgagee shall have the right to postpone and extend the date of termination of this Lease from the expiration of the additional sixty (60) day period above, provided that the mortgagee shall have cured or caused to be cured any existing monetary Event of Default and thereafter pay the Basic Rent and Additional Rent required to be paid hereunder and forthwith commence necessary action to acquire or transfer Lessee's interest and estate secured by the mortgage by foreclosure thereof, or otherwise, and shall prosecute such action to completion with due diligence and continuity. If the mortgagee shall be actively pursuing the acquisition or transfer of Lessee's interest hereunder or if mortgagee shall be enjoined or stayed from commencing or pursuing such action to acquire or transfer Lessee's leasehold estate as a result of a proceeding involving Lessee arising under the Bankruptcy Code, the time for Lessee's mortgagee to comply with this Section 12.02(c)(5) shall be extended for such period as shall be reasonably necessary to complete acquisition or transfer with reasonable diligence and continuity.

(6) Provided that the Transfer Requirements are satisfied and subject to Section 12.02(g), in the event of any foreclosure under any mortgage, all right, title and interest of Lessee under this Lease may be assigned to and vested in the purchaser or transferee at such foreclosure; and such purchaser or transferee shall be vested with all right, title and interest of Lessee under this Lease, provided that such purchaser or transferee shall thereafter be subject to all the requirements of Lessee to Lessor set forth herein.

(7) Under no circumstances shall any mortgagee be liable for the performance of Lessee's obligations hereunder unless and until such mortgagee succeeds to the interest of Lessee under this Lease. In the event that a mortgagee succeeds to the interest of Lessee under this Lease, the liability of such mortgagee, its successors and assigns, shall be limited to its leasehold interest in this Lease, and upon the sale or assignment of its leasehold interest in this Lease, such successor lessee shall have no liability under this Lease for any obligations accruing from and after the date of such assignment or transfer. Neither the mortgagee, its successors and assigns, nor any agent, partner, officer, trustee, director, shareholder, director or principal (disclosed or undisclosed) of the mortgagee, its successors or assigns, shall have any personal liability hereunder.

(8) No modification, amendment or supplement of this Lease shall be effective as against Lessee's mortgagee unless a copy of the proposed change shall have been delivered to such mortgagee and such mortgagee shall have approved the change in writing. No merger of this Lease and the fee estate in the Leased Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Leased Premises without prior written consent of Lessee's mortgagee.

(d) Lessor acknowledges that Lessee may grant the mortgagee the right to exercise Lessee's option to purchase the Leased Premises as provided in Section 14.01 of this Lease. Lessee irrevocably direct that Lessor accept, and Lessor agrees to accept, performance by any such mortgagee of the Lessee's right to exercise the option to purchase the Leased Premises granted to Lessee by Section 14.01 hereof, regardless whether and Event of Default has occurred, provided such performance by said mortgagee shall occur within the period of time granted to Lessee by the terms hereunder to exercise such right.

(e) Notwithstanding the term of any mortgage, Lessee's mortgagee shall have no further rights in the Lease except as stated herein.

(f) Lessor covenants that in the event of a termination of this Lease for any reason, including, but not limited to as a result of any disaffirming or rejection of this Lease in connection with a proceeding involving Lessee pursuant to the Bankruptcy Code, and subject to the rights herein granted to a mortgagee, Lessor shall serve upon the mortgagee notice that this Lease has been terminated together with a statement of any and all sums which would, at that time, be due under this Lease but, for such termination, and of all other defaults, if any, under this Lease then known to Lessor. At option of the mortgagee, Lessor shall enter into a new lease ("New Lease") of the Leased Premises with a person or entity designated by the mortgagee, subject to the provisions of Section 12.02(f). The New Lease shall be (i) effective and commence as of the date of termination of this Lease, (ii) at the same Rent and upon the same terms, provisions, covenants and agreements as contained in this Lease, (iii) subject to the conditions of title with respect to the Leased Premises as exist on the commencement date of the New Lease and (iv) subject to the rights, if any, of parties then in possession (actual or constructive) of all or any part of the Leased Premises. Lessor shall assign to mortgagee, without recourse, warranty or representation of any kind and on such form as is reasonably acceptable to Lessor, all of Lessor's interest in any sublease, if any. The terms of this Section 12.02(f) are subject to the following provisions:

- (1) The mortgagee shall make written request upon Lessor for the execution of such New Lease within thirty (30) days following notice from Lessor to mortgagee that this Lease has been terminated, which request shall be accompanied by payment to Lessor of all sums then due Lessor by Lessee, or by the mortgagee, or both, under this Lease;
- (2) The mortgagee shall pay to Lessor, at the time of execution and delivery of the New Lease, any sums not yet paid that, at the time of its execution and delivery, would be due pursuant to this Lease but for the termination thereof;
- (3) The New Lease shall be executed and delivered within thirty (30) days after the date the mortgagee requests that a New Lease be executed;
- (4) The mortgagee shall perform and observe all covenants contained in the New Lease on Lessee's part to be performed during the period the mortgagee is in possession of the Leased Premises under the New Lease and shall further remedy any other condition with respect to the Leased



Premises that Lessee was obligated to remedy under the terms of this Lease, subject to the additional time frames for compliance afforded to mortgagee pursuant to Section 12.02(c) above; and

- (5) The mortgagee as lessee under the New Lease shall assume all of the obligations of Lessee under any sublease first accruing on or after the effective date of the New Lease.

The mortgagee as lessee under the New Lease shall have the same right, title and interest in and to the Leased Premises as Lessee had under this Lease at the time of its termination.

(g) If and to the extent that a mortgagee succeeds to the interest of the Lessee or becomes the Lessee pursuant to a New Lease (the "Mortgagee Transfer Date"), and Lessor has not reasonably determined that such mortgagee satisfies the Transfer Requirements on or about the Mortgagee Transfer Date, it is understood and agreed that such mortgagee shall nevertheless be entitled to the benefits of this Lease for a period of nine (9) months after the Mortgagee Transfer Date without satisfying the Transfer Requirements, provided, however, mortgagee shall be provided with an additional period of time of up to three (3) months to satisfy the Transfer Requirements, if, in the Lessor's reasonable discretion, mortgagee has been diligently pursuing a transfer of the Leased Premises (or the mortgagee's interest therein) in accordance with the Transfer Requirements. If, by the expiration of such nine (9) month period (as the same may be extended in accordance with the prior sentence), mortgagee has not satisfied the Transfer Requirements in the reasonable discretion of Lessor, Lessor may terminate this Lease.

### ARTICLE XIII

#### EVENTS OF DEFAULT; TERMINATION; ORIGINAL LESSEE'S RIGHTS

Section 13.01. Event of Default; Termination. If any one or more of the following events (herein called "Events of Default") shall happen:

- (a) if Lessee shall cease to exist as a legal entity (as determined by the State in which the Lessee is organized);
- (b) if Lessee shall default under any material obligations under this Lease;
- (c) if Lessee shall fail to construct the Improvements as required by the terms of Article XI of this Lease on or before the Construction Completion Date;
- (d) if Lessee fails to spend an amount substantially equal or greater to the Costs of the Project in order to complete the construction of the Project;
- (e) if Lessee fails to maintain the commercial public liability insurance required herein;
- (f) if default shall be made in the due and punctual payment of any payment due pursuant to Section 7.04 hereof;

(g) if more than ten percent (10%) of the ownership interests in the Lessee are transferred to ownership different from ownership of the Lessee at the time the Project was approved by the City Council of the City of Knoxville and by Lessor; provided, however, no transfer of ownership interests in the Lessee shall be deemed a transfer for purposes of this Article XIII as long as such transfer complies with the Transfer Requirements or otherwise satisfies Section 12.01(e); or

(h) if default shall be made by Lessee in the due performance of or compliance with any of the terms hereof;

then in any such event Lessor at any time thereafter and, while such Event of Default shall continue, may give a written termination notice to Lessee, which notice shall specify the nature of the Event of Default, the right of Lessee to cure such Event of Default, and a date of termination of this Lease not less than thirty (30) days after Lessee's receipt of such notice if such Event of Default is not cured on or prior to such stated date of termination. Notwithstanding the foregoing or anything herein to the contrary, if (i) Lessee cures such Event of Default within thirty (30) days after its receipt of Lessor's written notice thereof, such notice shall be deemed null and void, in which case this Lease shall remain in full force and effect, and (ii) if Lessee fails to cure such Event of Default and this Lease terminates, Lessee shall nonetheless have the right to exercise the option to purchase the Leased Premises pursuant to Section 14.01 below. Lessor hereby expressly acknowledges and agrees that Lessee's option to purchase the Leased Premises expressly survives the termination of this Lease. Lessor further expressly acknowledges and agrees that Lessor's sole and exclusive remedy for any Event of Default shall be termination of this Lease in accordance with the terms hereof.

Section 13.02. Original Lessee's Rights. Lessor shall not terminate this Lease by reason of the occurrence of any Event of Default hereunder unless Lessor shall have given the Original Lessee (i) a copy of its written notice to Lessee of such Event of Default containing a statement of Lessor's intent to exercise its rights hereunder addressed to the mailing address last furnished by the mortgagee, and (ii) the opportunity to cure such Event(s) of Default, as follows: Original Lessee shall be entitled to cure any stated Event of Default for a period of sixty (60) days after receipt by Original Lessee of Lessor's written notice, provided that if the Event of Default is non-monetary in nature and is of such a nature that it is not reasonably susceptible of cure within said sixty (60) day period then, provided Original Lessee has commenced to cure such Event of Default within such sixty (60) day period and thereafter prosecutes the same to completion with reasonable diligence, Original Lessee shall be entitled to such additional time as is reasonably necessary to cure such Event of Default. If Original Lessee cures all stated Events of Default in accordance with the foregoing provisions, then both the notice of Events of Default given to Lessee (with a copy to each Original Lessee) shall be deemed satisfied, and of no further force or effect. Lessor agrees to accept performance of Lessee's obligations hereunder by Original Lessee with the same force and effect as though observed or performed by Lessee. Original Lessee shall have the right to enter upon the Leased Premises for the purpose of remedying any such default.

## ARTICLE XIV

### PURCHASES AND PURCHASE PRICES

Section 14.01. Option to Purchase. Lessee (or its mortgagee as provided herein) shall have an option to purchase the Leased Premises for an amount equal to \$100 at any time during the Term and until (i) the Term has ended and Lessor has given notice of the end of such Term to Lessee (unless such time is extended by Lessor), (ii) the occurrence of a fire or other casualty and expiration of the 180-day determination period provided in Article VIII above, or (iii) Lessor's termination of the Lease following an uncured Event of Default. To exercise such option Lessee shall (i) give Lessor at least ten (10) calendar days' prior written notice of its intent to exercise the option to purchase the Leased Premises granted pursuant to this Section 14.01, which notice shall state the intended purchase date, and (ii) comply with the provisions of Section 14.03 hereof. The option to be exercised by Lessee hereunder may be exercised whether or not a default or Event of Default has occurred and may be continuing hereunder, and whether or not this Lease is then in full force or effect. The terms of this Section 14.01 shall survive the expiration or termination of this Lease.

Section 14.02. Granting of Easements. From time to time during the Term, Lessee shall have the right, at Lessee's expense, to cause Lessor (i) to grant easements affecting the Leased Premises, (ii) to dedicate or convey, as required, portions of the Leased Premises for road, highway and utilities and other public purposes, and (iii) to execute petitions to have the Leased Premises or portions thereof annexed to any municipality or included within any utility, highway or other improvement or service district.

Section 14.03. Exercise of Option.

(a) To exercise the option to purchase the Leased Premises contained in Section 14.01, Lessee shall pay, or cause to be paid, on or prior to the purchase date, as the purchase price the sum of \$100.00; provided, however, if such option to purchase is exercised prior to the end of the Term, the purchaser shall also pay the PILOT payments described in Section 7.04 of this Lease prorated at the time of such purchase for the year in which termination occurs.

(b) On the purchase date for the purchase of the Leased Premises pursuant to Section 14.01, Lessor shall convey the Leased Premises to Lessee by quitclaim deed conveying Lessor's interest in the Leased Premises. Lessee shall pay all expenses relating to such conveyance.

(c) The terms of this Section 14.03 shall survive expiration or termination of this Lease.

## ARTICLE XV

### MISCELLANEOUS

Section 15.01. Applicable Law. This Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Tennessee.

Section 15.02. Severability. In the event that any clause or provision of this Lease shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any of the remaining provisions hereof.

Section 15.03. Notices and Demands. All notices, certificates, demands, requests, consents, approvals and other similar instruments under this Lease shall be in writing, and shall be deemed to have been properly given and received if sent by United States certified or registered mail, (a) if to Lessee addressed to Lessee at Metro Knoxville HMA, LLC, c/o CHSPSC, LLC, 4000 Meridian Boulevard, Franklin, Tennessee, Attention: David Nicely, Regional President of Division I Tennessee Operations, with a copy to Metro Knoxville HMA, LLC, c/o CHSPSC, LLC, 4000 Meridian Boulevard, Franklin, Tennessee, Attention: General Counsel and with a copy to c/o Greg D. Meadows, Esq., Gentry, Tipton & McLemore, P.C., 900 S. Gay Street, Suite 2300, Knoxville, Tennessee 37902, or at such other address as Lessee from time to time may have designated by written notice to Lessor; and (b) if to Lessor addressed to Lessor, 17 Market Square No. 201, Knoxville, Tennessee 37902 Attention: Chairman and a copy to c/o R. Culver Schmid, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., 265 Brookview Centre Way, Suite 600, Knoxville, Tennessee 37919, with a copy to the City of Knoxville, P. O. Box 1631, Knoxville, Tennessee 37902, Attention: Law Director or at such other address as Lessor may from time to time have designated by written notice to Lessee.

Section 15.04. Headings and References. The headings in this Lease are for convenience of reference only and shall not define or limit the provisions thereof. All references in this Lease to particular Articles or Sections are references to Articles or Sections of this Lease, unless otherwise indicated.

Section 15.05. Successors and Assigns. The terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their permitted respective successors and assigns.

Section 15.06. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same instrument.

Section 15.07. Expenses. In the event that Lessor shall be required to engage legal counsel for the enforcement of any of the terms of this Lease (whether as a result of an Event of Default, modification of the Lease or any other reason related to the Project), whether or not such employment shall require institution of suit or other legal services required to secure compliance on the part of Lessee, Lessee shall be responsible for and shall promptly pay to Lessor all reasonable, documented, out-of-pocket expenses (including reasonable attorneys' fees) incurred by Lessor as a result of such default, modification or the Project.

Section 15.08. No Liability of Officers, Etc. No recourse under or upon any obligation, covenants or agreement contained in this Lease shall be had against any incorporator, members, directors, officers, employees or agents, as such, past, present or future, of Lessor or Lessee, either directly or through the Lessor or Lessee. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator,

member, director, officer, employee or agent is hereby expressly waived and released by Lessee and Lessor, respectively, as a condition of and consideration for the execution of this Lease.

Section 15.09. No Liability of City, Officer, Etc. The City of Knoxville, Tennessee, and its officials and agents shall not in any event be liable for the performance of any obligation or agreement of any kind whatsoever herein, and none of the agreements or obligations of Lessor contained in this Lease or otherwise shall be construed to constitute an indebtedness of the City of Knoxville, Tennessee, or its officials or agents, within the meaning of any constitutional or statutory provision whatsoever.

Section 15.10. Limitation of Liability. Notwithstanding any other provision hereof, Lessor's liability hereunder shall be limited to its interest in the Leased Premises and Lessee shall not have any recourse against any other assets of Lessor.

Section 15.11. Sign. During the construction of the Improvements, Lessor and the City of Knoxville shall be permitted to place a sign on the Project indicating their support of Lessee's activities on the Leased Premises so long as such sign is in compliance with all local laws and regulations.

Section 15.12. Reports. During the term of the Lease, Lessee shall, at the request of Lessor, assist Lessor by providing to Lessor, or its designee, information necessary to complete (a) reports required by the terms of Tenn. Code. Ann. §§7-53-305(e) and 4-17-303 (and all amendments thereto) in the forms attached hereto as Exhibit E (or any similar form provided by Lessor), (b) the PILOT Compliance Checklist in the form attached hereto as Exhibit F; and (c) the Certificate of Completion in the form attached hereto as Exhibit D. If requested by Lessor, Lessee shall certify such information and sign the reports in its capacity as Lessee under the terms of this Lease. In the event an IRS Form 1099-S or any other federal or state reports are required to be filed as a result of the conveyance of title to the Leased Land, Lessee shall be solely responsible for filing all such reports.

Section 15.13. Memorandum of Lease and Purchase Option. Each of the parties agrees that within thirty (30) calendar days following the Effective Date, it will execute and deliver in recordable form a memorandum of lease and purchase option, in the form attached hereto as Exhibit G. Lessee shall record such memorandum and shall pay the recording costs thereof.

Section 15.14. Approvals by the City. Any approval required or permitted to be given by the City hereunder may be given by the Mayor of the City or her or his designee and shall not require further approval of the legislative body of the City.

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IN WITNESS WHEREOF, THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KNOXVILLE, has executed this Lease by causing its name to be hereunder subscribed by its duly authorized officer; and Lessee has executed this Lease by causing their names to be hereunto subscribed, all being done as of the date and year first above written.

**THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF KNOXVILLE**

By: \_\_\_\_\_  
Name: John Craig  
Title: Chairman

**METRO KNOXVILLE HMA, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF LEASED LAND**

**EXHIBIT B**

LIST OF ENCUMBRANCES PROVIDED FROM TITLE REPORT



**EXHIBIT C**  
**JOINDER OF LESSOR**

THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KNOXVILLE, a Tennessee public nonprofit corporation (the "Lessor"), as the landlord under that certain Lease Agreement (the "Lease") dated as of \_\_\_\_\_, 20\_\_ and between Lessor and \_\_\_\_\_, a \_\_\_\_\_ (the "Lessee"), as tenant, which Lease is evidenced by the Memorandum of Lease and Purchase Option recorded as Instrument No. \_\_\_\_\_, in the Register's Office of Knox County, Tennessee, and as the fee simple owner of the real property described on Exhibit A (the "Leased Premises"), hereby joins in the execution of that certain [Deed of Trust, Assignment of Leases and Rents and Security Agreement] (the "Deed of Trust") made by the Lessee for the benefit of \_\_\_\_\_ (the "Lender") to which this Joinder of Lessor is attached, at the request of Lessee solely for the purposes of (a) securing Lessee's obligation to pay to the Lender all of the indebtedness secured by the Deed of Trust; (b) subjecting and encumbering all of Lessor's right, title and interest in and to the Leased Premises to the Deed of Trust and all of its right, title and interest as Lessor under the Lease to the lien and charge created under and by the Deed of Trust; and (c) subordinating to the lien of the Deed of Trust all right, title and interest of Lessor in and to (i) the Leased Premises and (ii) the Lease. Lessor irrevocably grants, conveys and assigns to the Trustee named in the Deed of Trust and Trustee's successors and assigns, in trust, with power of sale, Lessor's right, title and interest in and to the Leased Premises and all of its right, title and interest as Lessor under the Lease, to have and to hold unto Trustee and Trustee's successors and assigns. As an accommodation party herein for purposes of the City of Knoxville payment in lieu of taxes ("PILOT") program, the Lessor, however, assumes none of the liability, financial or otherwise, of Lessee or any other person under the Deed of Trust by reason of this joinder. Notwithstanding any provision contained in this Joinder or in the Deed of Trust, it is agreed that the execution of this Joinder shall impose no liability whatsoever upon the Lessor, or any officer, director or trustee thereof for any obligation of the Lessee under the Deed of Trust. Anything to the contrary in this instrument notwithstanding, in the event of default by Lessee on any indebtedness secured hereby, the sole remedy against the Lessor is to cause the conveyance of any of its right, title and interest to the Leased Premises which is the subject of this Deed of Trust, and to divest Lessor of all of its rights, title and interest in and to this Leased Premises and in and to the Lease. Lender, by

accepting this Deed of Trust, agrees that it shall not sue for, seek or demand any deficiency judgment or other money judgment or to impose any liability whatsoever against the Lessor or its successors or assigns (including any incorporator, member, director, employee or agent) for repayment of any indebtedness secured hereby and the Lessor is fully exculpated therefrom by Lender and Lessee. The obligations of Lessor hereunder shall be non-recourse as to Lessor, and Lessor (and its officers, directors, employees and agents) shall have absolutely no personal or individual liability with respect to any of the terms, covenants and conditions of the Deed of Trust. Lessee and Lender hereby expressly agree that they shall look solely to the equity and the rights, title and interests of Lessor or its successor(s) interest in the Leased Premises and the Lease for the satisfaction of any remedy against the Lessor in the event of any breach by Lessor of any of the terms covenants and conditions of the Deed of Trust. This exculpation of Lessor's personal liability is absolute and without any exception whatsoever. Lessee and Lender acknowledge that Lessor is a governmental entity and is subject to the protection of the Tennessee Governmental Tort Liability Act, Tennessee Code Annotated § 29-20-101 through 29-20-408 (as amended from time to time), and nothing contained herein shall constitute a waiver or release of Lessor's rights and protections under said Act. Nothing contained herein shall be construed as impairing, reducing, altering or affecting in any manner any of Lender's rights or remedies against Lessee or against the Leased Premises or the Lease, all of which are expressly reserved and remain in full force and effect.

*{This Space Left Blank Intentionally – Signature Page Follows}*

**SIGNATURE PAGE TO  
JOINDER OF LANDLORD**

IN WITNESS WHEREOF, the undersigned has hereunto set its hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF KNOXVILLE**  
a Tennessee public nonprofit corporation

By: \_\_\_\_\_  
John Craig, Chairman

STATE OF TENNESSEE  
COUNTY OF KNOX

Before me, the undersigned authority, a notary public, of the State and County aforesaid, personally appeared John Craig, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chairman of THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KNOXVILLE, the within named bargainer, a Tennessee public nonprofit corporation, and that he as such \_\_Chairman, executed the foregoing instrument for the purposes therein contained, by signing the name of the public nonprofit corporation by himself as Chairman.

Witness my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**EXHIBIT D**

**CERTIFICATE OF COMPLETION**

**MADE BY** \_\_\_\_\_

**TO**

**THE INDUSTRIAL DEVELOPMENT BOARD CITY OF KNOXVILLE**

This certificate is made by \_\_\_\_\_, on behalf of \_\_\_\_\_, (referred to hereinafter as the "Lessee"), as its duly authorized representative.

The Industrial Development Board of the City of Knoxville, as lessor (the "IDB") and the Lessee previously entered into a Lease Agreement dated \_\_\_\_\_ (the "Lease") regarding the leasing of the real property and improvements located at \_\_\_\_\_, Knoxville, Tennessee and more particularly described in the Lease (such leased land, buildings, fixtures, and other improvements referred to collectively hereinafter as the "Project").

Pursuant to the terms of the Lease, the Lessee leased the Project from IDB and agreed to rehabilitate the improvements that constitute part of the Project by spending an amount not less than \$ \_\_\_\_\_ as described in Article XI of the Lease.

The rehabilitation and construction work performed by Lessee for the Project has been completed. In compliance with the requirements of the Lease, the Lessee wishes to certify and confirm to the IDB the actual costs expended in connection with the construction and rehabilitation of the Project.

Accordingly, the Lessee hereby certifies to the IDB as follows:

1. This Certificate is given by Lessee in order to comply with the terms of Article XI of the Lease and may be relied upon by IDB for the purpose described in the Lease as outlined in the Certificate.
2. The representative of the Lessee executing this Certificate has been authorized by the members of the Lessee to execute and deliver this Certificate on behalf of the Lessee. The undersigned is the Lessee's \_\_\_\_\_ and is familiar with the Lessee's organization, activities and operations, including, but not limited to, work performed by or on behalf of the Lessee in connection with the Project.
3. To the best of the undersigned's actual knowledge, each of the representations and warranties made on behalf of the Company in this Certificate are true, accurate and complete in all material respects.

4. The costs incurred by the Lessee in completing the acquisition, construction, and rehabilitation of the Project are more particularly described as follows (referred to hereinafter collectively as the "Costs of Construction").
- a. Fair Market Value of Land: \$\_\_\_\_\_.
  - b. Cost of construction and rehabilitation of improvements: \$\_\_\_\_\_.
  - c. Other costs relating to Project paid by Lessee: \$\_\_\_\_\_.
  - d. Total costs paid by Lessee for the Project: \$\_\_\_\_\_.
5. If requested by the IDB the Lessee shall attach hereto as **Exhibit A** the contracts, documents, or other similar agreements that substantiate the foregoing amounts.
6. All the foregoing Costs of Construction have been completed for the Project and paid by Lessee. Lessee has no right to receive any reimbursement or return of such funds constitutes part of the Costs of Construction.

IN WITNESS WHEREOF, the undersigned authorized representative of the Lessee has executed and delivered this Certificate of Completion on behalf of the Lessee as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**  
**of**  
**Certificate of Completion**

Construction Contracts, Certificates of Completion,  
Payment of Invoices, Etc.

**EXHIBIT E**

**COST/BENEFIT ANALYSIS AND REPORTS**

[Subject to Lessee's review and approval]

**EXHIBIT F**

**PILOT COMPLIANCE CHECKLIST**

**[Subject to Lessee's review and approval]**



**EXHIBIT G**

**MEMORANDUM OF LEASE AND PURCHASE OPTION**

THIS INSTRUMENT PREPARED BY:  
R. CULVER SCHMID  
BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC  
265 BROOKVIEW CENTRE WAY, SUITE 600  
KNOXVILLE, TN 37919

**MEMORANDUM OF LEASE AND PURCHASE OPTION**

THIS MEMORANDUM OF LEASE AND PURCHASE OPTION, dated as of \_\_\_\_\_, 20\_\_\_\_  
(hereinafter this "Memorandum") between **THE INDUSTRIAL DEVELOPMENT BOARD OF THE  
CITY OF KNOXVILLE** ("Lessor"), having a mailing address of 17 Market Square, Suite 201, Knoxville,  
Tennessee 37902-1405 and \_\_\_\_\_, a Tennessee  
\_\_\_\_\_, ("Lessee"), having a mailing address of \_\_\_\_\_.

WITNESSETH:

WHEREAS, Lessor and Lessee entered into a Lease dated as of the date hereof (the "Lease"), whereby certain property (the "Leased Property") consisting of the parcel of land described on Exhibit A attached hereto and the improvements thereon was demised unto Lessee; and

WHEREAS, Lessor and Lessee desire to enter into this Memorandum, which is to be recorded in order that third parties may have notice of the estate of Lessee in the Leased Property.

NOW, THEREFORE, Lessor, in consideration of the rents and covenants provided for in the Lease to be paid and performed by Lessee, does hereby demise and let unto Lessee the Leased Property on the terms and subject to the conditions set forth in the Lease. The term of this Memorandum shall commence on \_\_\_\_\_, 20\_\_\_\_ and continue until \_\_\_\_\_, 20\_\_\_\_.

All the terms, conditions, provisions, and covenants of the Lease are incorporated in this Memorandum by reference as though written out at length herein. Copies of the Lease are held by both Lessor and Lessee at their respective addresses first set forth above.

Lessee has an exclusive and irrevocable option to purchase the Leased Property on the terms and conditions set forth in the Lease.

This Memorandum is prepared for the purposes of recording a notification as to the existence of the Lease but in no way modifies the express and particular provisions of the Lease. In the event of a conflict between the terms of the Lease and the terms of this Memorandum, the terms of the Lease shall control. This Memorandum may be executed in any number of separate counterparts. All of such

counterparts, when so executed and delivered, shall be deemed to be originals and shall together constitute one document.

IN WITNESS WHEREOF, the parties hereto have set their hands or caused this instrument to be executed as of the day and date first above written.

**THE INDUSTRIAL DEVELOPMENT BOARD OF  
THE CITY OF KNOXVILLE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TENNESSEE     )  
                                      )  
COUNTY OF KNOX        )

Before me, the undersigned authority, a Notary Public with and for the State and County aforesaid, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon his oath acknowledged himself to be the Chairman of **THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF KNOXVILLE**, the within-named bargainor, a public not-for-profit corporation, and that he, as such Chairman, executed the foregoing instrument for the purpose therein contained by signing the name of said corporation as such officer.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE     )  
  )  
COUNTY OF KNOX         )

Personally appeared before me the undersigned authority, a Notary Public in and for said County and in said State, \_\_\_\_\_, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the \_\_\_\_\_ of \_\_\_\_\_, the within-named bargainor, a Tennessee limited liability company, and that he as such \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as its \_\_\_\_\_.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(Description of Property)

**Safety Complex CMAR - General Conditions Cost Detail/Proposal**

<u>Item Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Cost/Month</u>	<u>Months</u>	<u>Lump Sum Cost</u>
Project Director (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Project Manager (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Assistant Project Manager (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Superintendent (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Assistant Superintendent (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Field Supervisor (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Field Engineer (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Job Clerk (Including Labor Burden)	0	Month	\$ -	-	18	\$ -
Scheduling	0	Month	\$ -	-	18	\$ -
Automobile Allowance	0	Month	\$ -	-	18	\$ -
Automobile Fuel	0	Month	\$ -	-	18	\$ -
Office Trailers	0	Month	\$ -	-	18	\$ -
Office Furniture & Equipment	0	Month	\$ -	-	18	\$ -
Computers & Software	0	Month	\$ -	-	18	\$ -
Mobile Phones	0	Month	\$ -	-	18	\$ -
Office Supplies	0	Month	\$ -	-	18	\$ -
Postage & Shipping	0	Month	\$ -	-	18	\$ -
Printing Costs	0	Month	\$ -	-	18	\$ -
Photographs	0	Month	\$ -	-	18	\$ -
Drinking Water & Ice	0	Month	\$ -	-	18	\$ -
Temporary Office Telephone & Internet Service	0	Month	\$ -	-	18	\$ -
Temporary Office Power	0	Month	\$ -	-	18	\$ -
Temporary Office Water	0	Month	\$ -	-	18	\$ -
Temporary Office Holding Tanks/Sewer	0	Month	\$ -	-	18	\$ -
Temporary Construction Items Other	0	Month	\$ -	-	18	\$ -
Portable Construction Toilets	0	Month	\$ -	-	18	\$ -
Construction Dumpsters (Excluding Demolition Dumpsters)	0	Month	\$ -	-	18	\$ -
Construction Fence	0	Month	\$ -	-	18	\$ -
Safety Measures & Equipment	0	Month	\$ -	-	18	\$ -
Site Security	0	Month	\$ -	-	18	\$ -
Parking Fees	0	Month	\$ -	-	18	\$ -
Drug Testing	0	Month	\$ -	-	18	\$ -

First Aid	0	Month	\$	-	\$	-	18	\$	-
Storage Trailers	0	Month	\$	-	\$	-	18	\$	-
Small Tools/Expendables	0	Month	\$	-	\$	-	18	\$	-
Layout Instruments & Equipment	0	Month	\$	-	\$	-	18	\$	-
Project Signage	1	LS	\$	-	NA	NA		\$	-
Business License	1	LS	\$	-	NA	NA		\$	-
Insurance (Including GL, Auto, Workers Comp, & Bldrs Risk)	1	LS	\$	-	NA	NA		\$	-
P&P Bonds	1	LS	\$	-	NA	NA		\$	-
Permits (TBD)	1	LS	TBD		TBD	TBD		TBD	
Temporary Construction Utilities (TBD)	1	LS	TBD		TBD	TBD		TBD	
Permanent Utilities (TBD)	1	LS	TBD		TBD	TBD		TBD	
Gross Receipt Tax	1	LS	\$	-	NA	NA		\$	-

### Total General Conditions

\$ -

Highlighted Cells To Be Completed By Respondent

### **ADDENDUM NO. 3**

**Date:** May 6, 2019

**To:** All Proposers

**From:** Penny Owens, Assistant Purchasing Agent, City of Knoxville

**Subject:** Addendum No. 3 – Professional Construction Manager at Risk for a New Public Safety Complex

**RFPs to be Opened:** May 22, 2019 at 11:00:00 am (Eastern Time)

This addendum is being published to answer questions submitted by potential proposers regarding the above referenced Invitation to Bid. The addendum becomes a part of the Contract Document and modifies the original specifications as noted.

**Question #1:** Are the required forms that must be signed, included in the 40 page limit?

Response: No, the forms are not included in the 40 page limit. Please note the revision to the limit in Addendum No. 2.

**Question #2:** Please confirm that the City will carry property insurance on all existing buildings located at the project site. Please clarify whether the City will provide a waiver of subrogation as part of the contract terms.

Response: The City would prefer the CMAR carry Builder's Risk but the City can also provide the coverage, dependent on cost. Please include your cost to the City to provide the coverage. Note that this coverage will not be required on the Clarke Tower or Original 1929 building which are mostly excluded from the scope of work. The City will not provide a waiver of subrogation and per the terms in Section 6.6, the CMAR will be required to indemnify the City.

**Question #3:** On Page 6 of the RFP it states the Design Development and GMP should be complete by the end of October 2019. On Page 8 of the RFP, it states that the GMP will be developed at 65% completion of the Construction Documents (under Budget Estimate #3). What is the expectation actually?

Response: The GMP for construction is \$35.5 Million less Owner Contingency, CMAR Pre-construction Phase Fee, CMAR Construction Fee and CMAR Construction Phase General Conditions. Confirmation of the GMP will be continuous throughout each phase of design and at each estimate required from the CMAR so the design can be modified to maintain the GMP throughout final design phase. The CMAR will be an integral part of preconstruction estimating and design decisions. The CMAR preconstruction team should plan to work with the Owner's Representative and Design Team for 10 months beginning July 2019 – April 2020. The CMAR preconstruction team will be required to obtain pricing from subcontractors/vendors for each



scope of work throughout the 10 months of design to ensure GMP is maintained through cost effective design and competitive subcontractor/vendor pricing.

**Question #4:** We were given a time line for Design Development Documents to be complete by the end of October. What is the expected completion of the Schematic Design for Budget Estimate #1?

Response:

Schematic Design Phase – 85 Days (May 13, 2019 – August 5, 2019)

Design Development Phase – 85 Days (August 6, 2019 – October 29, 2019)

Construction Document Phase – 135 Days (October 30, 2019 – March 12, 2020)

Bid/Final Pricing Phase – 37 Days (March 13, 2019 – April 18, 2020)

Construction Administration Phase – 608 Days (April 19, 2020 – December 17, 2021)

Warranty Phase – 366 Days (December 18, 2021 – December 18, 2022)

\*\*\*Selective Demolition – 60 Days (October 1, 2019 – November 29, 2019)\*\*\*

**Question #5:** What is the total expected Construction Document Design time for the Final Estimate?

Response: Construction Document Phase – 135 Days (October 30, 2019 – March 12, 2020)

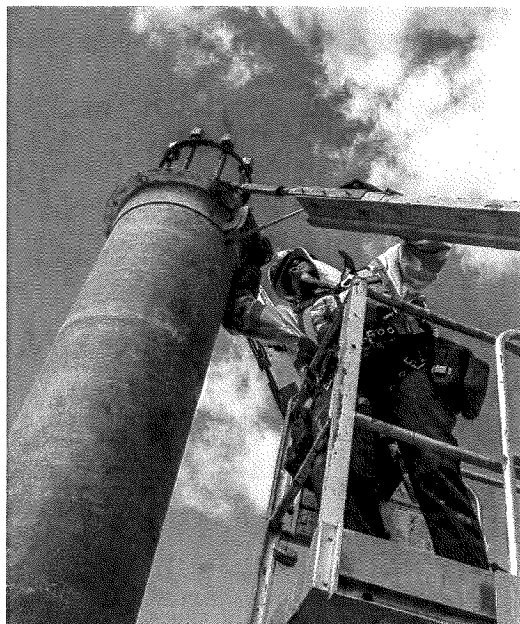
**Question #6:** What is the expected Construction design time to achieve 65% Construction Documents for the Budget Estimate #3?

Response: 88 Days (October 30, 2019 – January 26, 2020)

**END OF ADDENDUM NO. 3**

# A. Corporate Information

## Responsive to Proposals



## Proven Results

**Top 100 Contractors**  
*Engineering News-Record*

**Giants 300**  
*Building Design + Construction*

**Nationally Ranked Healthcare Construction Manager**  
*Modern Healthcare*

**Top 10 University Builders**  
*Building Design & Construction Magazine*

1. Brief history of the company, including present ownership and key executives.  
(Please note if the company has been debarred for any reason thus preventing the Owner from utilizing any federal or state funding for the Project).

Messer Construction Co., founded in 1932, is a construction manager and general contractor, providing leadership for complex, commercial construction projects and has partnered with the cities of Nashville, TN; Columbus, OH; Cincinnati, OH; and Raleigh, NC to build police and/or fire facilities.

Messer's **transformational investment in our people, communities and innovative building solutions** has enhanced the landscape of regions we serve throughout the Midwest and Southeast in which our employees live and work. A local builder with national resources and expertise, the company has delivered value for more than 85 years through quality construction and client experiences, taking care to both **exceed customer expectations and build long-term relationships**.

Messer is an employee-owned company, meaning owners of our company will be working on your project. This benefits you because each of our project management team members think like a company owner - with a long-term vision to do what's best for you, ensuring our sustained success and yours.

Key executives include our regional Vice President, John Blum, who will provide any needed oversight to your project, and company Chairman Tom Keckeis and President and CEO Tim Steigerwald.

Messer has not been debarred for any reason.

## Purpose

Building better lives for our customers, **communities** and each other.

## Mission

Messer will lead the building construction process for sustained growth and profitability through:

- + Decreasing injuries and leading change in the industry by staying true to our Core **Safety** Values and driving towards Zero Injury
- + Professional performance creating value for our customers
- + Ethical business practices
- + Providing an environment where an individual's professional growth is the foundation for company growth

Your project, which will provide a high level of public safety service for our community, aligns perfectly with our purpose and mission and we can't wait to partner with you.

## Fiscal Year 2018 Results

**\$1B**  
Revenue Managed

**\$2.02M**  
Community Giving

**\$153.6M** (17.06%)  
Supplier Diversity Spend



2. Evidence of the company's financial capacity to provide a performance bond of 100% of the contract construction cost.

**See below for evidence of our ability to provide a bond for \$500 million.**



**Christopher C. Murphy**  
Chief Underwriting Officer  
Travelers Bond & Specialty Insurance  
Construction Services  
One Tower Square, S203B  
Hartford, CT 06183



**Matthew E. Lubin**  
Executive Vice President  
The Federal Insurance Company  
202B Halls Mill Road  
Whitehouse Station, NJ 08889

March 1, 2019

To Whom It May Concern:

**Re: Messer Construction Company**

Travelers Casualty and Surety Company of America and The Federal Insurance Company are pleased to share with you our experience, as co-sureties, with Messer Construction Company ("Messer"). We consider Messer to be one of our outstanding and most valued clients in whom we have the highest confidence. Through our many years of association, this company has, in our opinion, remained properly financed, well equipped, and capably managed.

It is our opinion Messer is qualified to perform any project they decide to undertake. At their request, we will give favorable consideration to the execution of contract performance and payment bonds in the \$500,000,000 single job range with an aggregate work program of approximately \$2,000,000,000.

Please note the decision to issue performance and payment bonds is a matter between Messer and its co-sureties and will be subject to our standard underwriting at the time of any final bond request, which will include, but not be limited to, the acceptability of the contract documents, bond forms, and financing. We assume no liability to third parties if for any reason we do not execute said bonds.

Please note Travelers is rated A++ (Superior) and Federal Insurance Co. is rated A++ (Superior) by A.M. Best.


If you have any questions or need additional information, please do not hesitate to contact us.

Sincerely,

**Travelers Casualty and Surety Company of America**

  
\_\_\_\_\_  
Christopher C. Murphy

**The Federal Insurance Company**

  
\_\_\_\_\_  
Matthew E. Lubin

:avp



3. Location of corporate headquarters and the location of the office that will handle this project.

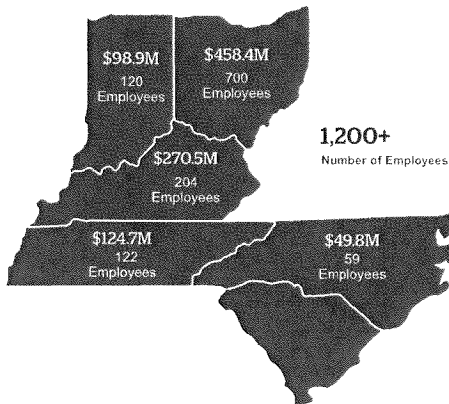
4. A company organizational chart.

3. The corporate headquarters is in Cincinnati, Ohio.

The location of the office that will handle this project is  
120 Perimeter Park Road | Knoxville, TN 37922.

The City of Knoxville will benefit from our local team's knowledge of the market and relationships with local subcontractors, while also benefitting from all the resources of a large nationally-ranked firm.

As you can see in the requested organizational chart at right, you will have a company Executive Officer, John Blum, involved with your project, backed up by all the Corporate Support Services shown in the box at the bottom right.



**Thomas M. Keckels**  
Chairman

**Timothy J. Steigerwald**  
President and CEO

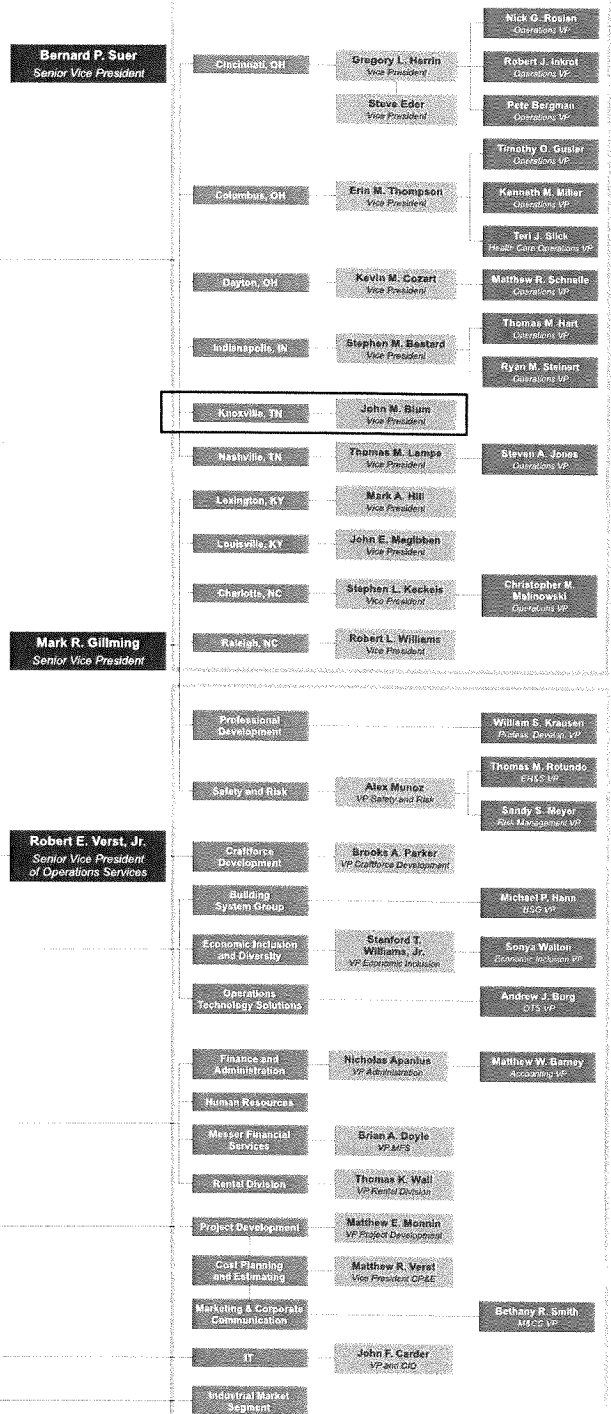
**Mark S. Luegering**  
Chief Operating Officer

**Mark R. Gilling**  
Senior Vice President

**Robert E. Verst, Jr.**  
Senior Vice President  
of Operations Services

**E. Paul Hitter, Jr.**  
Chief Financial Officer

## Operations



## Corporate Support Services

**Executive Leadership Team**

Department or Region

Executive Officer

Officer



5. A description of the company's quality control and safety programs and their bearing on this Project. Include worker's compensation Experience Modification Rate for the last 5 years.



### Benefits

- + Messer's Quality Leadership Systems ensure consistent and high quality results

### Proven Results

“Messer didn't just build a quality building; they assisted in creating an innovative and inspiring atmosphere that enables CCHMC to perform cutting edge research that will change the outcome for children around the world.”

Wayne Williams  
Project Manager, Facilities  
Cincinnati Children's Hospital Medical Center



## Quality Leadership System

Messer is committed to providing quality projects for our clients. This is accomplished through a disciplined and consistent approach using processes and tools developed by Messer leadership. We take a proactive approach that identifies the risks early and provides avenues for Messer managers to mitigate these risks and produce a quality project for our clients.

Messer's Quality Leadership System (QLS) provides for complete alignment of resources, processes, problem solving, and continuous improvement that delivers not only the technical components of quality but also a quality experience for our clients. The QLS utilizes a roadmap of planned processes and proven tools that are executed in a systematic manner in order to ensure that project goals and quality expectations are met. It focuses on clearly understanding the project requirements, developing written plans to support the project approach, executing the developed plans, and measuring the results.

A Project Quality Plan is developed and includes a Three Phase process:

### Preparatory Phase

Review of project goals including drawing, specification and manufacturer's requirements. Pull best practice documents from Messer's internal library. Develop a meaningful checklist to identify potential deficiencies and track corrections.

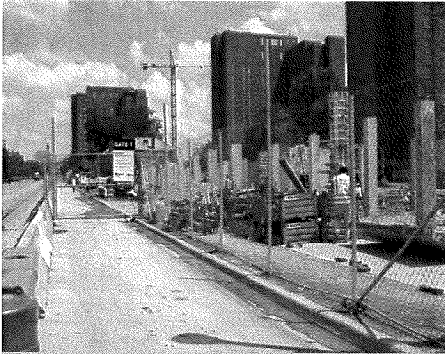
### Implementation Phase

The initial inspection phase is completed once a representative portion of the work is completed. Mock-ups are often used during the initial inspection phase to facilitate quality. At this time the level of workmanship is reviewed and agreed upon prior to proceeding any further. If there are any concerns with the level of quality it is addressed at this time.

### Follow-Up Phase

Follow-up inspections are made and documented on the quality control audit checklist. The purpose of these inspections is to ensure quality work is maintained and meets the level of quality determined during the initial inspection. During the follow-up inspections, completed work is reviewed against the contract documents.





**Pictured:** Jason Hess, your proposed project manager, helped keep students safe during this \$305 million, large-scale, occupied, phased multi-building renovation and new construction project. 2,600 students lived in the district during the project's first year and 3,600 students lived there during the second year of construction.

#### Benefits

- + Delivering Zero Injuries is necessary for the well-being of both employers and employees. It helps to protect employee lives and can keep project cost and delays to a minimum.
- + Keeps your insurance costs low; no expenses for medical costs
- + No accidents means no delays to progress
- + Enhances your brand image as a leading safety-minded company
- + Constituents perceive you as a good corporate citizen



## Safety

### Messer is committed to creating and maintaining a Zero Injury culture.

Messer's culture is one in which we strive to achieve **zero injuries, incidents or accidents on every project, every day**, because it's the right thing to do. We are a company of builders who respect not only each other, but also our business partners. We are passionate about keeping everyone safe. The City of Knoxville Public Safety Complex deserves a Construction Manager as committed to safety as Messer, as you'll read below in our Core Safety Values.

#### We live every day by our **Core Safety Values**:

- + We believe no job, task or schedule is more important than the health and safety of people on or near our jobsites.
- + We are responsible for and take action to ensure our own safety and the safety of those around us.
- + We will return every person home to their families safely each day.

### Safety as part of the Messer Culture

Messer strives to engage leaders to drive safety within all levels of the company. Whether inside or outside of the fence, safety is at our core. Our recently launched **5S Program** gives Messer leaders additional tools and processes to help promote a zero injury culture.

### Better than Industry Averages

Our EMR rates the last five years are all better than the industry averages:

	2014	2015	2016	2017	2018
EMR	.86	.77	.67	0.73	0.73

All project planning will begin and end with your occupants. Their safety will be our top priority. Early and continuous planning will ensure staff and visitors are well aware of ongoing construction operations. All traffic (pedestrian and vehicle) will be properly routed to maintain access and clearly separate construction activities and all other activities.

### General Safety

- + Maintain all Life Safety systems around the project site.
- + Maintain access to the fire department connections.
- + Maintain walking paths and drives around the site.
- + Clearly defined and controlled access zones to minimize vehicular and lift traffic.

### Site-Specific Safety Plan

The Messer team will develop the following for your project:

- + **Project Risk Assessment**
- + **Messer Team Site-Specific-Safety Plan**
- + **Subcontractor Site Specific Safety Plan Outline**
- + **Emergency Procedures Signage**
- + **Monthly Safety Reports**



6. A description of the company's in-house pre-construction services capabilities.

## Preconstruction Services



Preconstruction is a period before construction for Messer to help you, your design team and your organization's key stakeholders create a plan for success. Our priority is to collaborate with your stakeholders to provide you timely and accurate information.

We realize construction is one small part of your business. Messer helps you align your capital decisions to your organization's business plan and helps you make informed business decisions.

### Goal Alignment

We work with your key stakeholders—from designers to the CEO—to define what you want and make sure scope matches available funds. Everyone agrees upon project goals and guiding principles, decreasing the chance that needs will change during the project which could cost you time and money.

### Planning

We help you determine any phasing needed for your project then help you schedule those phases to meet your end date. We use tools like Building Information Modeling (BIM) and Lean planning, among others. Our construction experts create plans that ensure no compromise to ongoing operations. Your space will open on time, providing a return on your investment when planned.

### Cost Estimating

Messer will ensure your building matches your budget. Our 30+ in-house estimators have an in-depth knowledge of current costs in your local market. Our estimating team also includes mechanical and electrical systems specialists. We perform value analysis on your design to find ways to save you money and create long-term value.

### Quality

Messer works with your stakeholders to ensure the facility can be built as designed and determine the best way to do so. Using constructability and design reviews, we solve problems before construction begins preventing delays and costly changes.

### Procurement

When planning procurement of design and construction work, Messer often re-aligns the traditional construction supply chain to take advantage of Lean concepts like design assist, prefabrication and bulk purchasing. Our experience shows these methods can often dramatically improve project performance. We also work to maximize diverse business participation on all our projects, even if there are no stated client goals.

*7. A brief description of project disputes and/or claims in the last 5 years reaching a formal dispute resolution stage noting the parties and the monetary amounts involved.*

Messer was engaged in 2016 in a renovation of an existing building in Nashville, TN. Our contract value was \$2.4 M. The drawings were incomplete resulting in disagreements on the scope and details of the work. The customer ceased payments to us on the project and purported to terminate us. After the owner, DZL, was sued by our subcontractor, the owner counterclaimed and stated a claim against Messer. We are currently working with the customer to resolve the claim.

In 2017 a subcontractor on the BCTCS project in Georgetown, KY had serious performance issues. Despite multiple notices from Messer and promises by the subcontractor, portions of their work were late and some of the work had to be redone. The non-performance caused other subcontractors additional costs which were deducted from the amount owed to the subcontractor. Despite efforts by Messer to reach an agreement with the subcontractor they proceeded to file a lien on the project. Once the lien was deemed improper due to the project being a Commonwealth of KY project, the subcontractor filed suit in the county court. After the lawsuit was filed the issue was moved to mediation where it was settled and the lawsuit was dismissed. The exact financial settlement amount cannot be disclosed due to a confidentiality agreement but it was not for a substantial amount.

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### Benefits

- + Messer's preconstruction service will drive better outcomes ensuring a high return on investment for your facility and your organization

### Proven Results

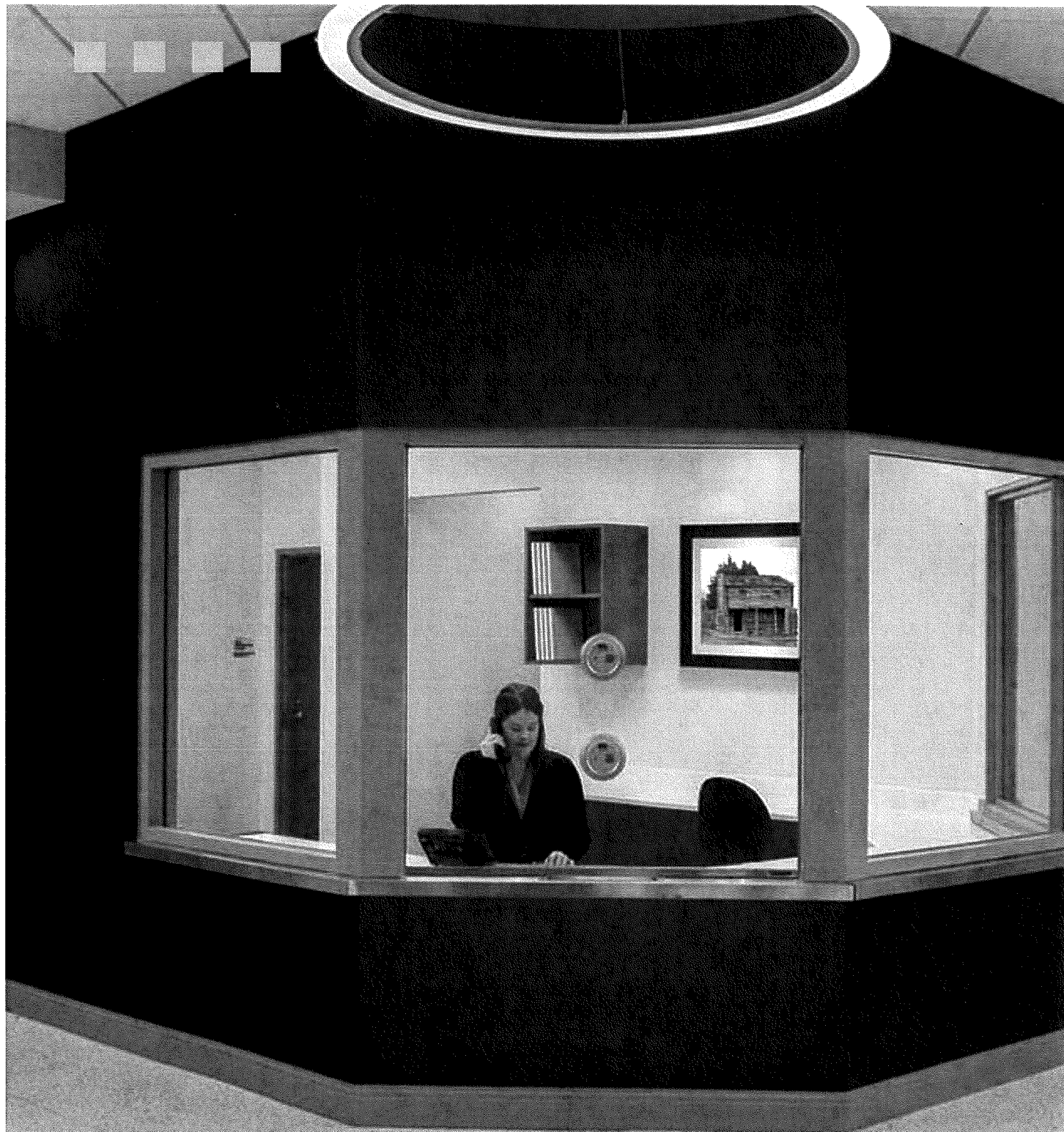
“Messer's insight into preconstruction planning has been invaluable.”

Mr. Robert Gilliam  
Project Manager  
Tennessee Board of Regents

“The employees of Messer can be counted on as team players. They are problem solvers and understand the importance of meeting budget and schedule without sacrificing quality.”

Ms. Paula Crowley  
CEO  
Anchor Health Properties





## B. Project Understanding



Metro Nashville Police HQ and Family Justice Center



1. Describe the company's approach to pre-construction services, including its capabilities in estimating, scheduling and project management. Describe the company's approach to pre-construction and construction phase services in the context of the scope outlined in this RFP. Describe how the company stays abreast of current technologies, innovative practices and current market pricing structure. Describe how the company will provide effective estimating for key subcontractor areas of responsibility such as HVAC, electrical and plumbing components during the budgeting phase.

*Describe the company's approach to pre-construction services, including its capabilities in estimating, scheduling and project management.*

### Estimating

Messer's projects are supported by our in-house estimating department that consists of 30+ cost planning experts, including mechanical and electrical specialists. Our cost experts provide cost information from initial concept estimates to final project costs. Our experience and firsthand knowledge of the local construction market makes our cost information extremely accurate, and will give you confidence when planning capital expenditures.

### Scheduling

During preconstruction, Messer has the ability to accurately project manpower and construction costs in your schedule to enable you to best allocate capital funds.

**Our preconstruction professionals led by Doug Downey work with your stakeholders to ensure construction activities coincide with your goals, the end user needs and any of your planned events during construction.** We also engage designers and subcontractors in the scheduling process to ensure they are making reliable commitments rather than having their schedule dates provided by Messer. This is a Lean Construction approach also known as Reverse Phase Scheduling.

This approach gives the entire project team ownership of the schedule, ensures the right durations are in place for all activities and increases the level of accountability for all parties involved. Messer also has the ability to create resource loaded schedules. We also use an approach called Flow Scheduling which is detailed in the following section.

### Project Management

During preconstruction, our approach to managing your project includes having a preconstruction leader, **Doug Downey**, who is supported by our regional vice president, **John Blum**, regional estimator **Tom Fromholt** and the team of estimators mentioned above. **Matt Miller** will lead analysis of all building systems, IT and security components. **Jason Hess**, General Superintendent, will also work with the preconstruction team to help develop phasing, logistics and constructability plans. This provides continuity from preconstruction into construction.

*Describe the company's approach to pre-construction and construction phase services in the context of the scope outlined in this RFP.*

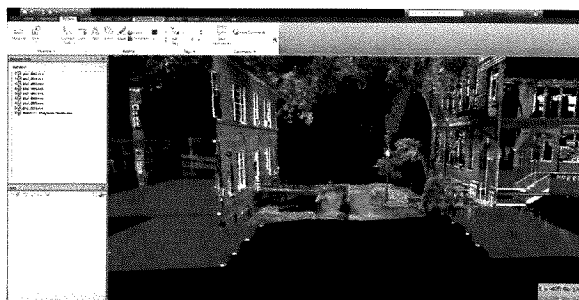
### Preconstruction

Given the many unknowns in this project, we recommend a successful approach we've used called **Target Value Design (TVD)**.

**During TVD, a project is designed to a detailed estimate rather than focusing on producing an estimate based on design.** TVD offers designers and owners an opportunity to engage in the design conversation concurrently (collaboratively planning and re-planning the project) with those people who will procure services and execute the design.

Rather than design alone and then come together for group reviews and decisions, team members work together to define issues, produce solutions then design to those solutions. This helps ensure the designed facility meets your available budget. It also enables us to **estimate faster**, maximizing every dollar you invest.

Our in-house experts can also capture **3D laser scans**. After demolition, we can help you and your design team by laser scanning the interior area that remains post demolition and clean-up. This will verify existing conditions and ensure designs are accurate.



To see a video of a sample laser scan, click [here](#) in the electronic copy of the proposal. Laser scans help ensure design and construction accuracy, saving you money by preventing re-work.



**Messer has enrolled 43 projects in CCIPs with total construction value more than \$3.7 billion.**

**We have done this successfully with public entities including the City of Columbus, City of Nashville, and City of Lexington.**

### **Contractor Controlled Insurance Program (CCIP)**

Although a CCIP is not required (according to your addendum), it can benefit this project and The City of Knoxville. This proposal is based on risk management advantages and efficiencies gained by utilizing a Contractor Controlled Insurance Program (CCIP) to meet our overall contractual obligations for workers compensation, employer's liability, and general/excess liability insurance. Our proposal includes a project CCIP rate of \$27.61/\$1,000 for insurance on the costs associated with our proposal for Construction Management(CM) services. Should a CCIP not be utilized, then the proposed insurance costs associated with our CM proposal are subject to adjustment.

A Contractor Controlled Insurance Program (CCIP or wrap-up) is a consolidated approach to insurance that provides a single General Liability and Worker's Compensation insurance policy for Messer and all enrolled subcontractors. This offers enhanced risk management benefits versus traditional methods where all contractors provide their own insurance with varying carriers and insurance limits.

### **What does CCIP provide?**

- + Project specific insurance for workers compensation, employer liability, general liability, and excess liability for enrolled contractors "on-site" exposures only (the CCIP does not control off-site exposures, as enrolled contractors maintain their own insurance for these risks/exposures)
- + Uniform limits and coverage terms for all participant which eliminates gaps and inefficiencies
- + CCIP coverage is provided to enrolled parties subject to the terms of the Owner contract including the wrap-up language requirements and limits
- + The CCIP also provides one insurer and one defense team for all enrolled party claims

### **How do you benefit?**

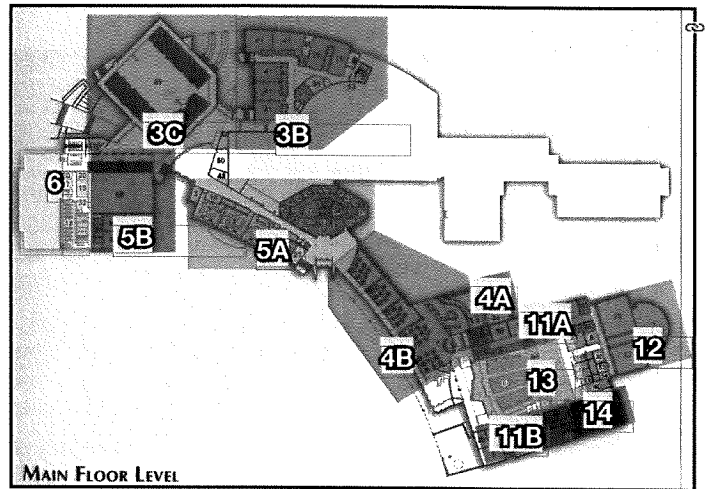
- + CCIPs provide guaranteed cost insurance with no deductibles
- + There is consistent coverage and claims management from one top tier carrier for everyone that is enrolled
- + A comprehensive and inclusive safety program on the jobsite+Litigation is reduced as there is only one carrier and defense team in lieu of multiple carriers and legal teams with many interests
- + Completed operations coverage is provided through the statute of repose meaning there is consistent coverage for a meaningful period of time beyond project completion
- + Small businesses often do not have the ability to insure themselves for large complex commercial construction. A CCIP provides these small businesses the ability to participate which helps increase diverse spend on the project.
- + All costs for administration and claims management associated with the CCIP are included



## Construction

Safety is always our first concern. Our team will create a safety plan that clearly separates construction activity from any building occupants. **During our \$51 million addition and renovation project at Oak Ridge High School, your proposed Senior Project Manager Doug Downey and his team protected 1,500 students from construction activities by planning 22 separate phases of work over 390,000sf.** The illustration at right shows a number of the phases on the main floor level.

**One piece of our safety and logistics plan for your project will be routing construction traffic away from the high school traffic as best as possible.** St. Mary Street is an integral flow street for Fulton High School traffic so routing traffic efficiently and keeping safe roads and sidewalks will be a high priority.

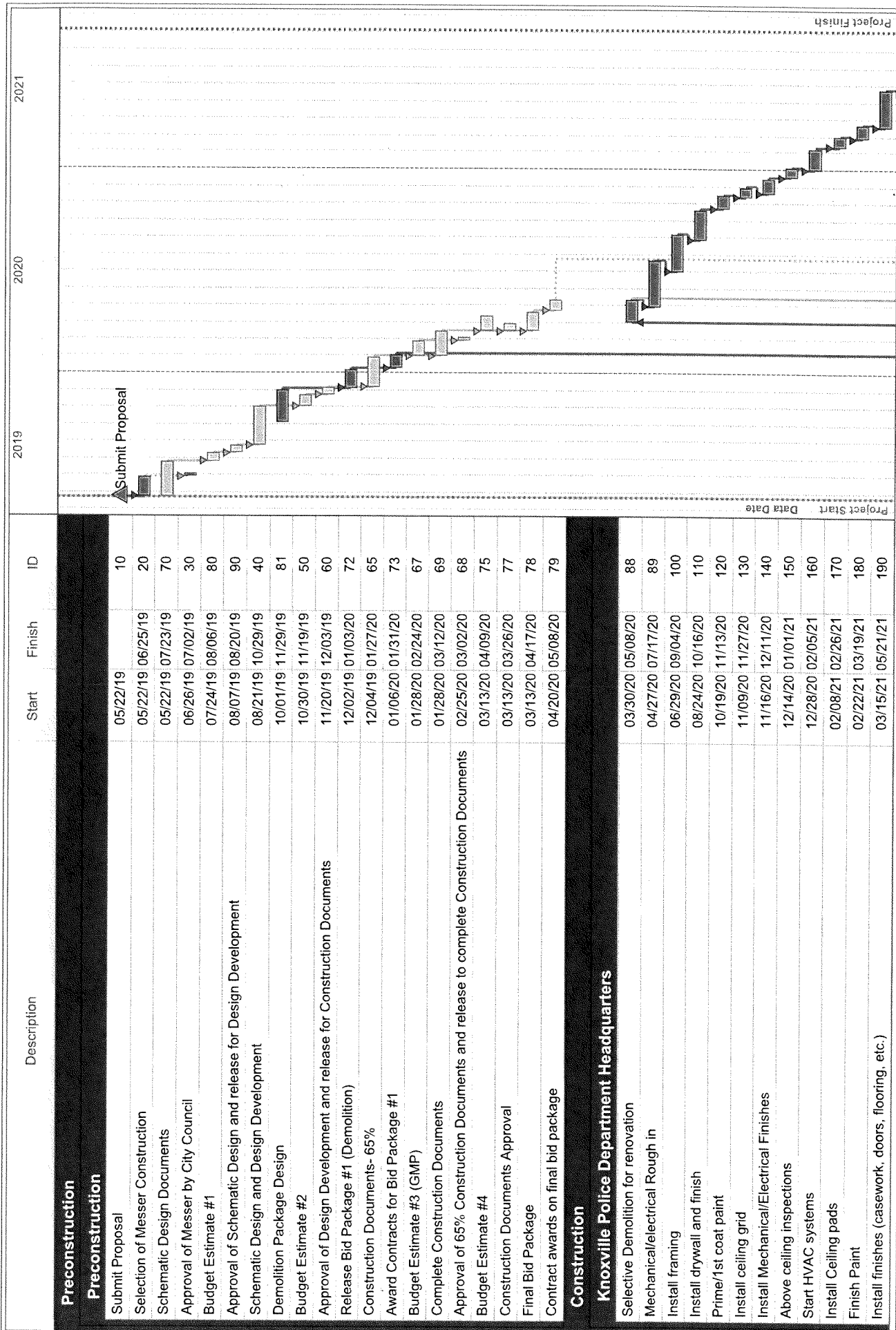


Messer understands and sees the vision of the City of Knoxville with regards to their plans of future redevelopment of the St. Mary's site. Although the existing tower currently does not have specific or current plans for future development, Messer understands that during construction, a contract or development plan could be executed. With that in mind, **Messer will plan to treat and maintain all buildings throughout the preconstruction and construction phases as if they were occupied.** Subsequently, if the City of Knoxville does enter an agreement with someone to redevelop the tower while Messer is onsite, the additional work required to turn the building over would be minimal.

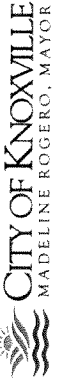
## Scheduling

Messer sees an opportunity to use a technique called **Flow Scheduling**, which is based on the Lean principle of Single Piece Flow. We've used it on more than 50 projects during the last four years. With Flow Scheduling, we break the project into similarly sized or dense areas (instead of an entire floor), determine the best sequence, and then set a rhythm or "takt" time to completing those areas. This allows for a faster completion of the project, more efficient subcontractors, higher quality, earlier in-place mock-ups, and a safer work environment for the trade partners. **We understand the KFD Administration staff currently leases space at a separate location – flow scheduling can speed up construction, meaning your people can move in sooner and KFD can stop leasing space sooner, saving money.**

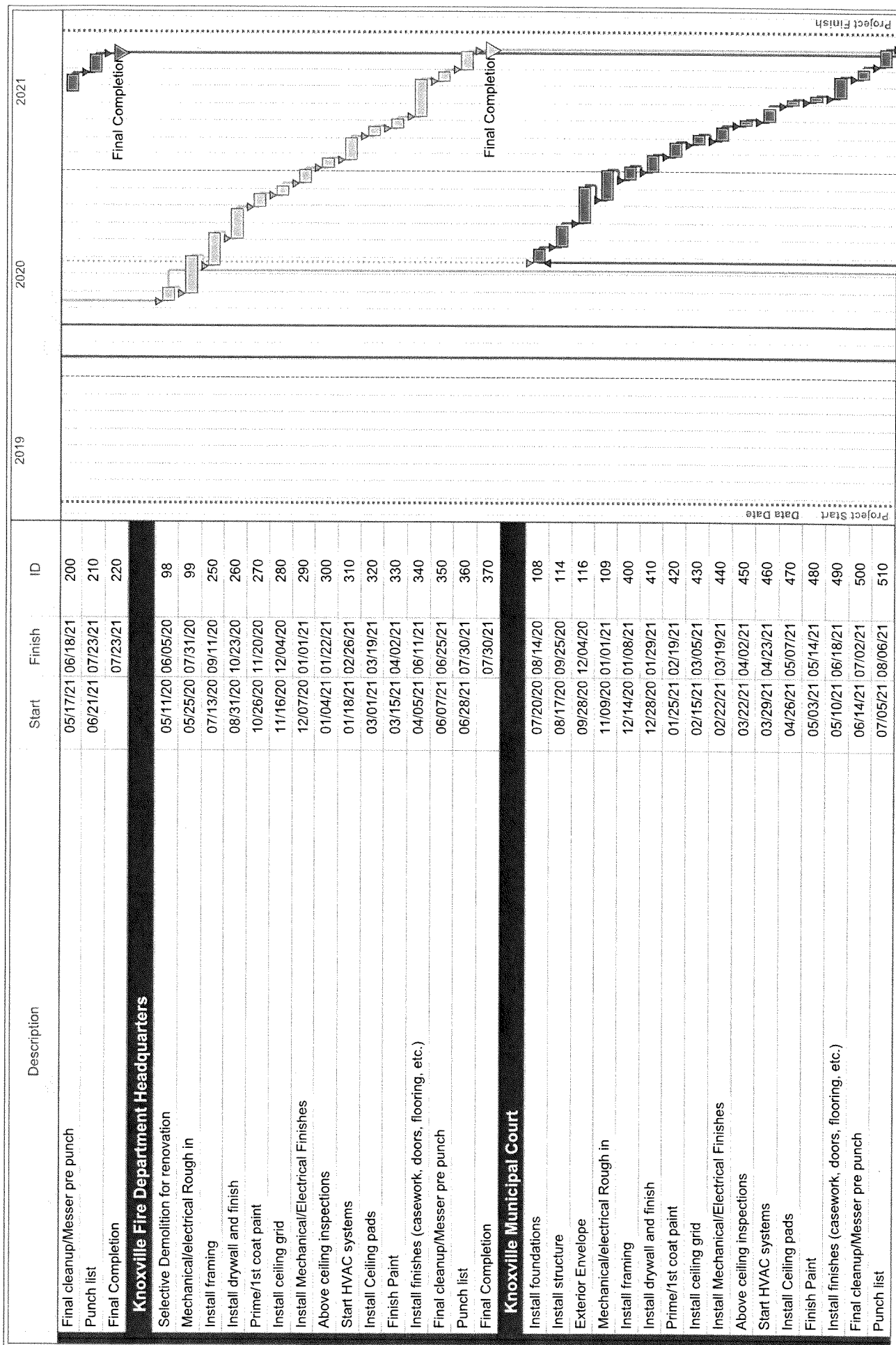
We have included a preliminary schedule on the following pages. It also includes move-in periods for the Knoxville Police Department, Knoxville Fire Department, Knoxville Municipal Court, Knoxville Pension Board and Knoxville Emergency 911.



City of Knoxville  
 New Public Safety Complex



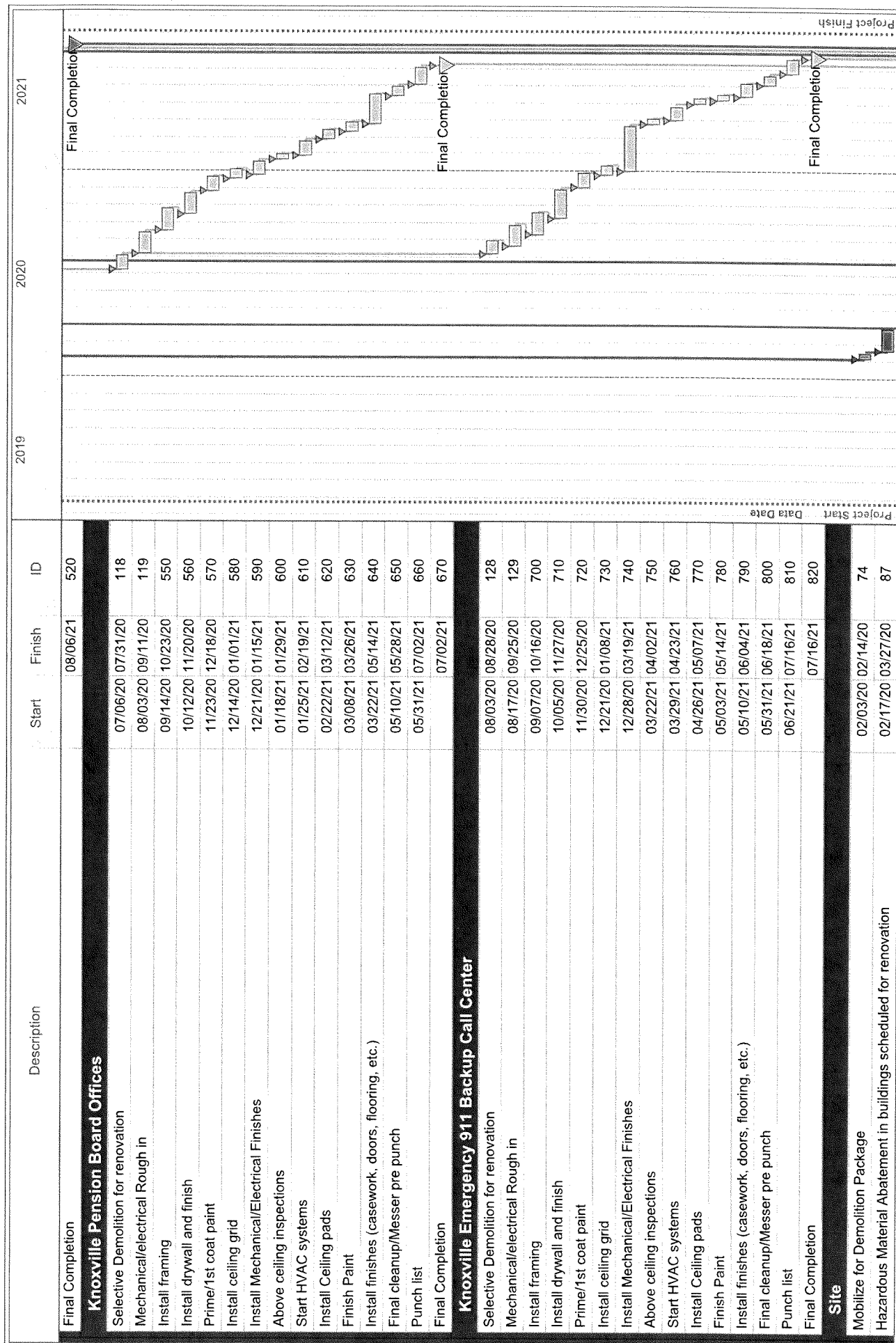




Start Date: 05/22/19  
 Finish Date: 09/03/21  
 Data Date: 05/22/19  
 Run Date: 05/20/19

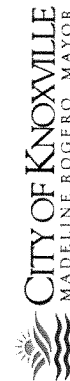
City of Knoxville  
 New Public Safety Complex





Start Date: 05/22/19  
 Finish Date: 09/03/21  
 Data Date: 05/23/19  
 Run Date: 05/20/19

City of Knoxville  
 New Public Safety Complex



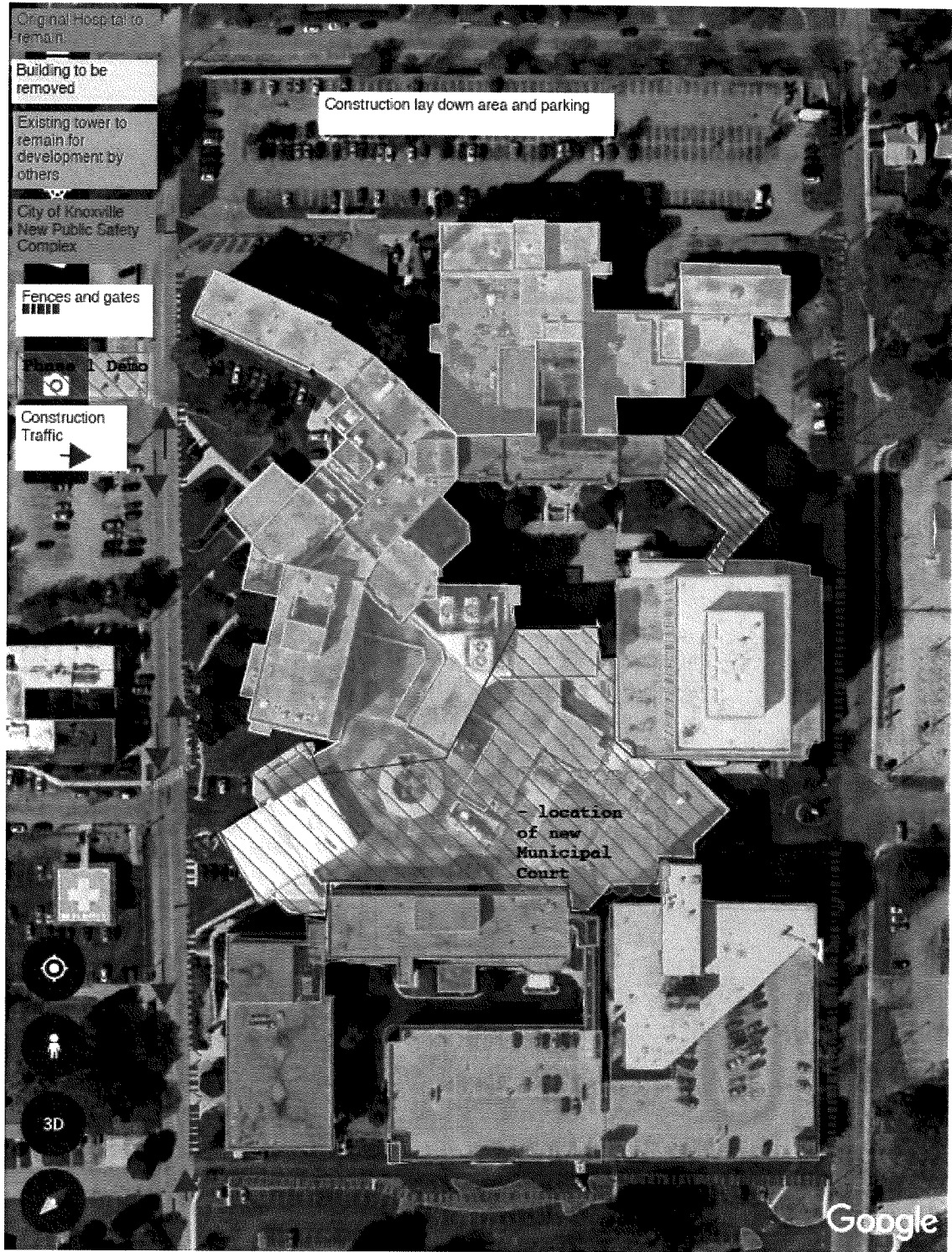






## Demolition

Our demolition plan will be in two stages, shown below. First, Messer plans to demo the buildings (shown in yellow and red lines) between **Clarke Tower** (Blue) and what will be the **New Public Safety Complex** (Orange). This demolition will open the area that will become the new Municipal Court building. Also planned in phase 1 demolition will be the building attached to Clarke Tower (Blue) and the original **hospital** (Green), which will both remain. Demolishing the building between the existing and original buildings will open up space, so if in fact Clarke Tower starts a redevelopment process during construction, all parties will have operating space throughout construction. Messer believes that this demolition plan is not only advantageous to our schedule for construction but is also looking at the City of Knoxville's future plans for this site.





### Brick Preservation

**Because of the history and beautiful color of the original brick, and future plans for development, Messer would propose the thought of saving uncompromised and quality bricks from the phase 1 demolition.** The well-conditioned bricks would be saved and available for use on the Clarke Tower or the original hospital, if needed. We believe because of the original color of the brick, getting a close match in the future would be difficult and saving as many bricks as possible could be beneficial for any future plans the city has for the site.

*Describe how the company stays abreast of current technologies, innovative practices and current market pricing structure.*

### Current Technologies and Innovative Practices

Messer stays abreast of current technologies and innovative practices in several ways. We have a **Virtual Construction / Building Information Modeling Group** that is constantly researching and developing new technologies to help us improve outcomes in schedule, cost, quality and safety. Additionally, we are a **founding member of the Lean Construction Institute** and have continued to refine our Lean Construction approach (based on Toyota's Lean Manufacturing principles) for the past two decades. We are the **43rd largest CM at Risk in the nation** and, as such, are involved in many professional organizations and events where we learn about and investigate new technology.

We have identified opportunities to use current innovative practices for your project.

### BIM for Facility Management

Throughout design and construction, Messer collects thousands of lines of data about your project. BIM for Facility Management is an efficient way to receive this information in the way you want it, with a flick of a switch. Messer is a pioneer in this space, and we look forward to discussing how you can take advantage of this innovation.

### Laser Scanning

As mentioned earlier, **laser scanning provides a number of benefits for The City of Knoxville.**

- + Helps better identify existing conditions, enabling the project team to mitigate issues prior to construction
- + Creates accurate as-built model of existing facilities
- + Reveals discrepancies among as-built drawings, construction drawings and actual conditions
- + Expedites survey process by minimizing need for field measurements

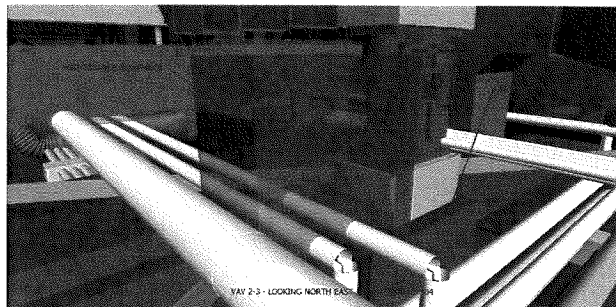
### Building Information Modeling

Creating your building in 3D virtually before physically building the project provides The City of Knoxville with the following benefits:

- + Improves accuracy during 3D MEP systems coordination
- + RFIs reduced by 72% during construction phase
- + **Change orders reduced by 47%**
- + **Average cost of a change order decreased by 55%**
- + Installation duration of coordinated systems decreased by 5%
- + MEP system deficiencies decreased by 56%

### Innovaya

- + Innovaya is a software that extracts information from the model created during the design process
- + Innovaya creates an environment for bridging the gap between the BIM model and model-based estimating
- + While a conventional takeoff can take upwards of 60 minutes creating multiple sheets, door schedules, and is manually organized by frame type, door type, size, etc. Innovaya takeoff takes 10 seconds, creates one condensed list, organizes by component, and is done automatically
- + **Helps to give The City of Knoxville more frequent and timely updates to cost information during design.**



Using BIM enables us to build your project virtually before we physically build it, enabling us to identify any potential areas where systems might clash.

## Current Market Pricing Structure

Messer's Cost Planning and Estimating Department is a highly sought after source of construction industry pricing expertise. This department develops quarterly Market Conditions Reports to ensure Messer's construction professionals and business partners stay abreast of current market conditions and pricing. This report provides our team with the tools to make decisions that are in the City of Knoxville's best interest.

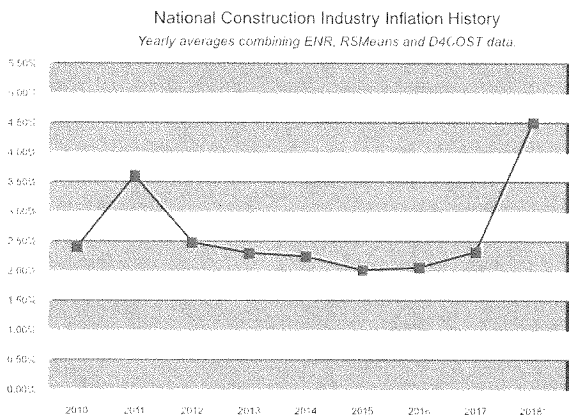
The Market Conditions Report is a combination of external resources as well as cost data that Messer has collected from our own local projects – including our extensive experience locally in Knoxville. From a planning standpoint this data is utilized to predict future pricing trends and escalations

## Market Conditions Report Executive Summary

### National Construction Cost Trends

Construction cost escalation as tracked by builders' construction cost indexes.

	CY 2018			
	Q1	Q2	Q3	Q4*
Engineering News-Record	5.82%	6.42%	4.49%	4.70%
RSMeans	1.37%	3.36%	4.43%	6.47%
D4COST	2.84%	3.72%	5.14%	6.60%



*This is an aggregate of construction and labor cost not overhead and contractor markup as the construction.*

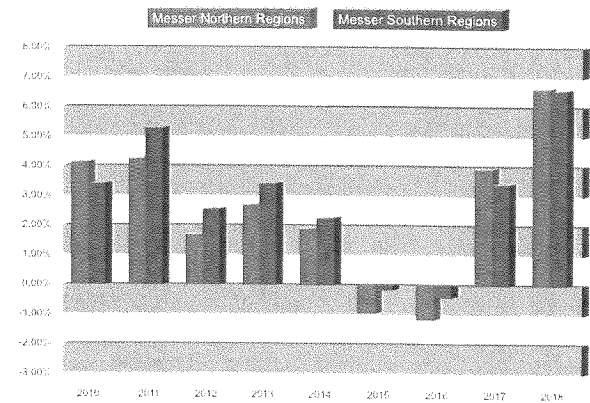
### Regional Construction Cost Trends

RSMeans cost index for each of Messer's ten regional locations (based on CY).

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>Messer Northern Regions</b>										
Cincinnati	-2.42%	3.82%	4.26%	1.85%	3.08%	1.65%	-1.31%	-1.65%	5.00%	6.25%
Columbus	-1.68%	3.78%	4.44%	1.86%	2.57%	1.16%	-0.41%	-1.71%	3.97%	5.95%
Dayton	-2.68%	3.89%	5.46%	1.75%	2.48%	2.70%	-1.52%	-1.33%	2.84%	7.71%
Indianapolis	-2.62%	5.02%	2.79%	1.16%	2.83%	2.08%	-0.52%	0.05%	3.86%	6.65%

<b>Messer Southern Regions</b>										
Charlotte	3.46%	1.49%	9.68%	2.05%	2.82%	4.20%	3.10%	0.17%	-3.48%	6.65%
Knoxville	-2.43%	3.18%	4.35%	2.25%	6.84%	2.17%	-0.98%	-0.12%	3.43%	6.30%
Lexington	-2.48%	6.47%	4.17%	2.46%	2.62%	1.36%	-1.02%	-0.22%	3.42%	5.73%
Louisville	-1.67%	3.45%	3.92%	2.76%	2.08%	0.91%	-0.75%	-1.77%	3.41%	5.41%
Nashville	-2.97%	2.36%	4.23%	3.16%	2.66%	2.69%	-1.15%	-0.33%	3.32%	6.12%
Raleigh	-4.04%	0.64%	5.52%	4.70%	3.14%	3.60%	0.66%	3.27%	4.97%	7.26%

Region Cost Index History  
Calendar year average RSMeans data for Messer's Northern and Southern Regions. See above table for details by region.



Our Market Conditions report helps Messer and our clients keep informed about regional and national cost trends and data.



*Describe how the company will provide effective estimating for key subcontractor areas of responsibility such as HVAC, electrical and plumbing components during the budgeting phase.*

**Messer has a group dedicated to HVAC, electrical, plumbing and mechanical estimating. Matt Miller, your MEP/Security/IT Superintendent, will work closely with this group to ensure we're delivering the most value. Throughout preconstruction, we will also engage the local subcontracting community for verification of budgets as well as current work loads.**

Owners and developers look to their construction partners at the conceptual and schematic level to determine systems that most effectively serve the needs of their projects. This includes input during selection of buildings systems such as HVAC, fire protection, plumbing, electrical, security and, communications.

Messer's approach to this analysis involves the following steps:

#### **First-cost Analysis**

Messer performs an evaluation of different system types driven by the owner's project requirements and directives given to the engineering team. This is Messer's opportunity to review historical costs of multiple building system types and present a range of costs for comparison.

#### **Life-cycle Cost Analysis**

This step focuses on first-cost, maintenance expense, energy conservation investments and, median service life. The analysis also considers the capacity of your maintenance staff. True value is achieved when you can operate your systems with your current building staff. Utilizing references such as the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) handbook, we can provide you with your equipment's life expectancy data.

#### **Systems / Equipment Applications Review**

Messer's team verifies system and equipment types are being used for the correct application based on general practices for various building types. We utilize this step to provide information regarding efficiencies, initial costs, maintenance concerns and other advantages/disadvantages associated with potential systems and equipment.

#### **Design Review**

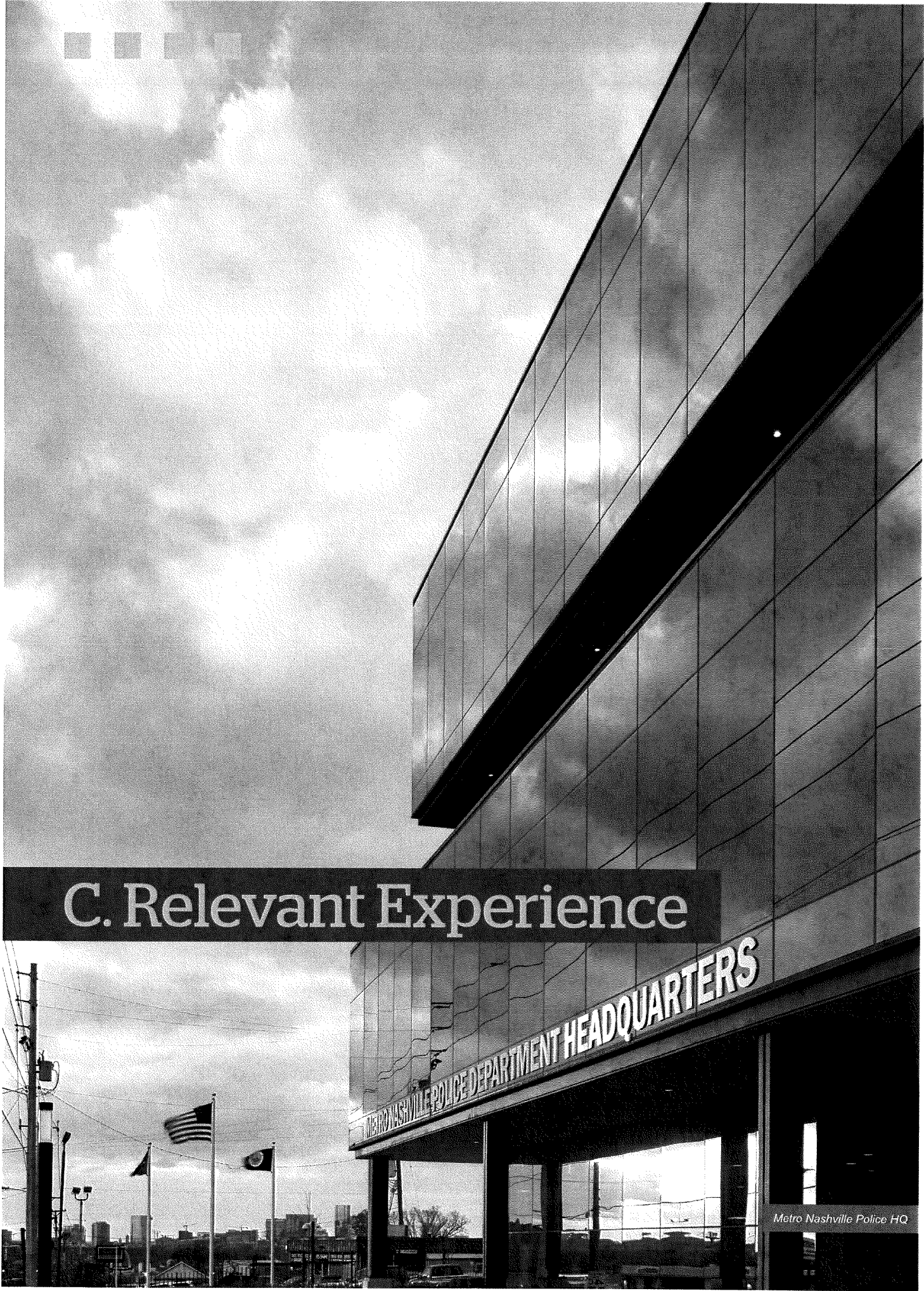
We conduct reviews at the Schematic Design, Design Development and Construction Documents phases to verify documents include all information outlined in Messer's Minimum Design Phase Deliverable Documentation Requirements.

This helps our team ensure project requirements are addressed in the basis of design documents and identify maintenance and constructability concerns. This also enables us to address building systems code compliance and complete value analysis of building system components and materials.

#### **Value Analysis**

During this process, Messer's team focuses on maximizing worth, working within design parameters to ensure you receive the most cost-effective systems without sacrificing function or quality.





# C. Relevant Experience



1. The company's current and average construction volume during the past 5 years.

Current construction volume: **\$4,064,338,895**      Average past 5 years: **\$1,106,783,599**

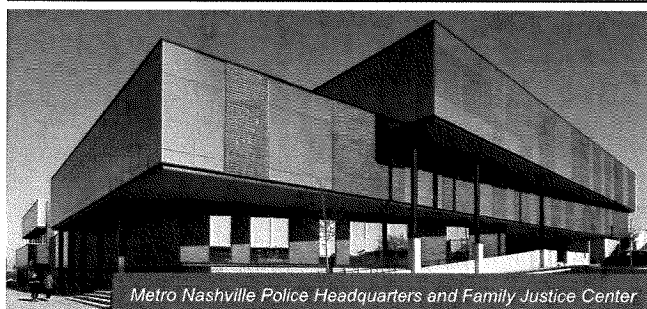
2. The experience on Municipal projects of similar size and complexity during the last 5 years and the project locations.

The City of Knoxville can take comfort in knowing Messer has led preconstruction and construction for **more than \$500 million worth of municipal and public/government projects in the last 5 years**. Many are noted in the table at left.

**Matt Miller**, your proposed Mechanical/Electrical/ Security/IT Superintendent, **worked on all of the Metro Nashville projects** listed and will lend this experience to our team.

**In the table on the right, you'll see other municipal experience including police, fire, courtrooms, offices and call centers. Other proposed team members worked on these, as noted in bold.**

Municipal Projects Last 5 Years	Location
Metropolitan Government of Nashville & Davidson County (Metro) Police Department Headquarters & Family Justice Center - <b>Matt Miller, Zach Howe, Kyle McDonald, Sonya Walton project</b>	Nashville, TN
Metro Fire Station 19 - <b>Matt Miller &amp; Sonya Walton project</b>	Nashville, TN
Metro Madison Police Precinct & Crime Lab - <b>Matt Miller project</b>	Nashville, TN
Midtown Hills Police Precinct - <b>Matt Miller project</b>	Nashville, TN
Tennessee Department of General Services Metro Center Renovations T3 - <b>Matt Miller project</b>	Nashville, TN
Metro Bellevue Branch Library - <b>Matt Miller project</b>	Nashville, TN
City of Raleigh Law Enforcement Training Facility	Raleigh, NC
Cabarrus County Courthouse	Concord, NC
Charlotte Area Transit System Sugar Creek Parking Garage	Charlotte, NC
Government District Master Plan Criminal Justice Services and Public Defender Renovations	Charlotte, NC
Cabarrus County Parking Deck	Concord, NC
City of Cincinnati Police District 3 Headquarters	Cincinnati, OH
City of Columbus, Michael B. Coleman Governmental Center	Columbus, OH



Metro Nashville Police Headquarters and Family Justice Center

Hall + Merrick Photographers

Municipal Projects Beyond 5-Year Limit	Location
Public Building Authority Term Contract - <b>John Blum &amp; Doug Downey project</b>	Knoxville, TN
McGhee Tyson Airport Rescue and Fire Fighting Facility - <b>Doug Downey project</b>	Knoxville, TN
Metro Fire Stations 3, 11, 21, 30, 31, 33 - <b>Matt Miller, Zach Howe, Kyle McDonald, Sonya Walton project</b>	Nashville, TN
Howard Office Building and Data Center - <b>Matt Miller project</b>	Nashville, TN
Metro West Police Precinct	Nashville, TN
Fayette County Circuit & District Courthouses - <b>Doug Downey project</b>	Lexington, KY
General Services Administration London Federal Courthouse Renovation	London, KY
Kentucky Exposition Center East Wing/Hall Renovation	Louisville, KY
City of Columbus Police Academy	Columbus, OH
Ohio Judicial Center - Build America Award Winner	Columbus, OH
City of Fairfield Justice Center Complex	Fairfield, OH
Hamilton County Justice Center Control Room & Courthouse Life Safety	Cincinnati, OH
William Howard Taft Center Renovation	Cincinnati, OH
Hamilton County Courthouse Renovations - <b>John Blum project</b>	Cincinnati, OH
Hamilton County Community-Based Correctional Facility	Cincinnati, OH
Montgomery County Juvenile Justice Center	Dayton, OH
Bellevue Branch Library	Nashville, TN
West Chester Government Center Office Renovation	West Chester, OH



3. Provide a description of 3-5 current or past projects of similar size and complexity where the company served either as CM at risk, CM as agent, or the general contractor and the following information for each:

- o Owner name, address and telephone number of contact person
- o Completion date
- o Brief description of the project and major elements and special challenges
- o Project size in square feet – separate new construction from renovation
- o Photographs of project
- o Contract type
- o Contract amount: budget, actual and change order value
- o Construction value
- o Note if company supplied pre-construction services

Emphasis will also be placed on the following items:

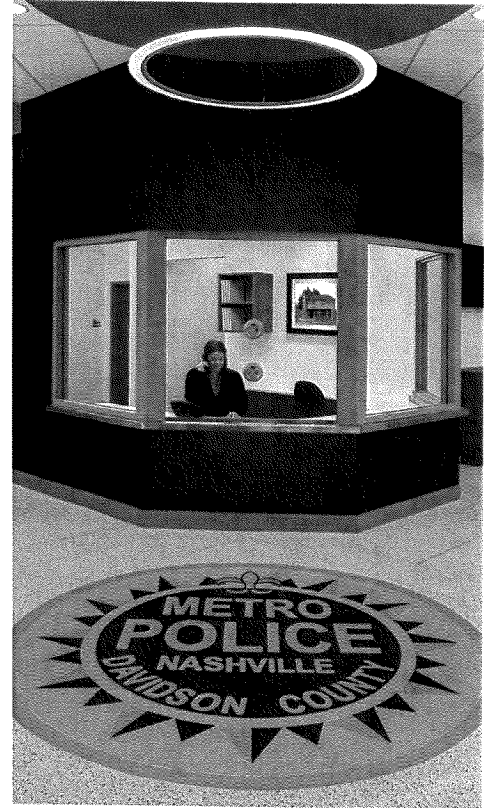
Projects that

- a. are valued in excess of \$35.5 million,
- b. involved both renovation and new construction,
- c. must be kept in operation during construction,
- d. required DBE facilitation,
- e. the company has provided pre-construction and construction phase services under a GMP type agreement

**The City of Knoxville will benefit from our experience with police, fire, courthouse and office projects. The five projects we've selected are summarized below with a brief description of how they relate to your items of emphasis, along with other important considerations. Further descriptions of the projects follow, with all the information requested above.**

	In excess of \$35.5 million	Renovation and new construction	Required DBE facilitation	Provided pre-construction and construction services under a GMP type agreement	Other considerations
Nashville Metro Police Department HQ and Family Justice Center	\$70 million	New Construction	Yes Goal: 20% Actual: 34.9%	Yes	+ LEED Silver + Matt Miller project + Multiple use (Police HQ + Family Justice) + 7,000 sf data center
John Weld Peck Federal Building	\$33.5 million	Renovation	Yes Goal: 29% Actual: 41%	Yes	+ LEED Gold + High level server rooms + Kept in operation during construction
Cincinnati Police District 3 HQ	\$15 million	New Construction	Yes Goal: 30% Actual: 36%	Yes - and managed design as design-build CMAR	+ DBIA National Award Winner + 1 <sup>st</sup> LEED Platinum, Net-Positive Energy police station in the world + Close community collaboration
Metro Nashville Police Department – Madison Police Precinct & Crime Lab	\$30 million	Renovation and New Construction	Yes Actual: 13.9%	Yes	+ LEED Silver + Matt Miller project + Build TN award
Metro Nashville Fire Stations 3, 11, 19, 21, 30, 31, 33	\$32.1 million	New Construction	Yes Goal: 20% Actuals: Between 27% and 43% for each station	Yes	+ First fire station in the Southeast to receive LEED Platinum certification + Matt Miller projects





## Metropolitan (Metro) Government of Nashville & Davidson County Police Department Headquarters & Family Justice Center

Nashville, TN

### Client

Metropolitan Government of Nashville & Davidson Co

### Project Value

\$70 million

### Architect

TM Partners, PLLC & Hastings Architecture Associates, LLC

### Structural Engineer

EMC Structural Engineers, P.C.

### Assignment

Preconstruction and Design-Build Construction Manager with a Guaranteed Maximum Price

### Project Completion

November 2018

### Mechanical Engineer

Envision Advantage, LLC

### Description

- + 187,346 sf that includes a 4-story police headquarters, 3-story family justice center, 40-car interior covered parking and 7,000 sf data center
- + Seeking LEED Silver

### Why Messer

Messer was awarded the opportunity to lead this project due to our previous successful experience with the Metropolitan Nashville Police Department (MNPDP).

### Owner Contact

Nancy Whittemore  
Director of General Services  
Metropolitan Government of Nashville and Davidson County  
P.O. Box 196300  
Nashville, TN 37219  
612-830-1191  
nancy.whittemore@nashville.gov

### Owner Reason for Building

The Metropolitan Nashville Police Department (MNPDP) works tirelessly to ensure the safety of more than 600,000 residents of Metropolitan Nashville & Davidson County. MNPDP strives to integrate their officers into the community beyond their typical duties - they want their officers to be recognizable figures and part of the community.

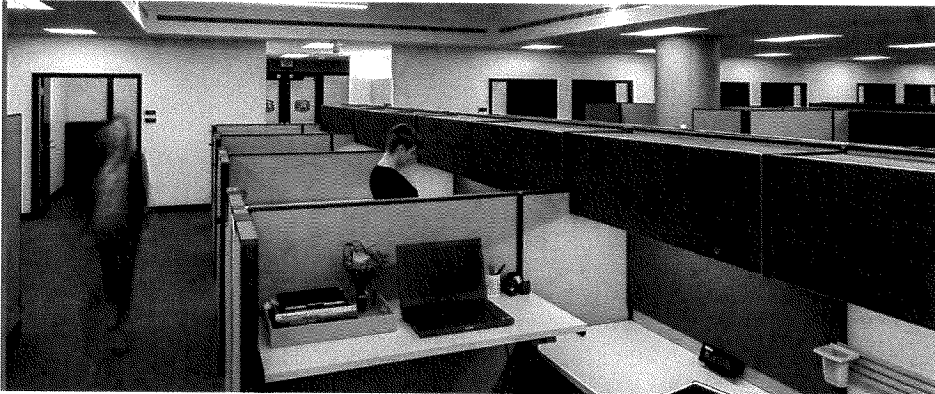
### Unique Challenges and Features

- + A pyramid glazing system at the Family Justice Center allows the staff to overlook the children's play area
- + This building features a police department memorial wall and a healing garden for the community
- + Buildings utilize a photovoltaic (solar panel) system
- + Initial cost was \$35 million. The owner requested additional square footage for each building and additional Data Center scope. The project finished at the desired budget.

**Messer**

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## John Weld Peck Federal Building Backfill Project

Cincinnati, OH

### Client

U. S. General Services  
Administration

**Project Value**  
\$33.5 million

### Architect

Schwartz/Silver

### Assignment

Preconstruction and CMAR with a  
Guaranteed Maximum Price

**Project Completion**  
October 2019

### Mechanical Engineer

Heapy Engineering

### Description

- + 455,000 renovation of open space to consolidate IRS services from various areas into two floors
- + Fit-out of now-vacant spaces for new tenants; refresh of existing tenant spaces; updates to existing signage to meet new standards; updated switchgear
- + Seeking LEED Gold Certification

### Why Messer

Messer was selected based on our firm's experience executing complex renovations for the GSA while maintaining a safe work environment, achieving schedule goals, and minimizing disruption to daily business operations.

### Owner Contact

Jena Richter, Property Manager  
Ohio Property Management Operations Branch  
GSA/PBS Southern Service Center Operations Division  
550 Main Street, Room 1413  
(513) 246-4418  
jennifer.richter@gsa.gov

### Owner Reason for Building

GSA recognized a need to consolidate existing IRS operations within the building. This work also provided an opportunity to renovate now-vacant spaces to allow occupancy by new tenants.

### Unique Challenges and Features

- + Executed within the confines of a fully-active facility
- + Scope included multiple self-containing air conditioning units for high-level server rooms and a specialized room for the Department of Energy with STC (Sound Transmission Class) rating of 50
- + Abided by stringent government requirements and restrictions
- + Maintained continuous communication with GSA (and its multiple project managers), various stakeholders, and tenant teams to address design changes and scope changes while minimizing impact on cost and schedule
- + Initial cost was \$27,365,000. The GSA added scope, including a switchgear project, renovation and other tenant design changes. The project finished at the desired budget.

**Messer**

We Are Building.

Bob Inkrot  
Operations Vice President  
Messer Construction Co.

Timothy J. Comer  
Internal Revenue Service  
550 Main Street Room 6-275  
Cincinnati, OH 45202

As we are diligently working on Phase 2 of the JW Peck FOB restack construction project, we would like to acknowledge and appreciate the performance of your onsite team, Todd Wright, Scott Parker, Tyler Book, Stephen Fredwest, Ben Gavin and Sam Clough. They have exhibited an outstanding work ethic throughout the major project impacting our agency the Internal Revenue Service in Phase 1 of the project. They have addressed efficiently the issues raised by our facilities and security team and solved each of these issues with utmost dedication and diligence.

On conducting our feedback with our employees, we came across many words of appreciation and compliments for your Team. It is an extreme pleasure for us to hear good things about your team from our clients. Not only the feedback but we have also received many emails of appreciation and thanks mentioning the good work done by you the team throughout the project.

This project had many complicated issues your team worked and solved them without surrendering to the situation. I have been in the business of facilities management with the federal government for over 30 years and worked with dozens of contractors, but this team from Messer construction have far and away been the most professional and knowable team I have ever worked with. Their professional demeanor, diligence and excellent communication of project progress have been impeccable.

Because of their constant hard work, we have the most satisfied employees with an appreciation of sitting in the most efficient state of the art office work space in the country

We are hopeful that they will keep on impressing us as we move into phase 2 of the project your good work. It has been a pleasure working with his team.

If you have any questions or need further clarification, please contact me.

Sincerely,

Timothy J. Comer  
Administrative Officer  
AWSS - SCR-CO Branch  
Great Lakes-Midwest - Ohio, Kentucky, Michigan, Illinois  
Indiana & Wisconsin  
Phone - 513-263-3399  
Cell - 513-200-7300

## ALCOHOL TOBACCO TAX AND TRADE BUREAU

550 MAIN ST. CINCINNATI OHIO 452

2/25/2019

Doane, Robin S.  
Alcohol tobacco tax and Trade Bureau  
550 Main St, Cincinnati Ohio 452

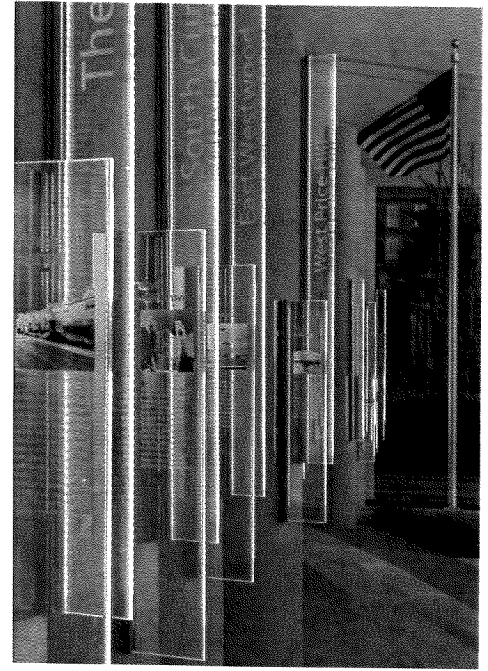
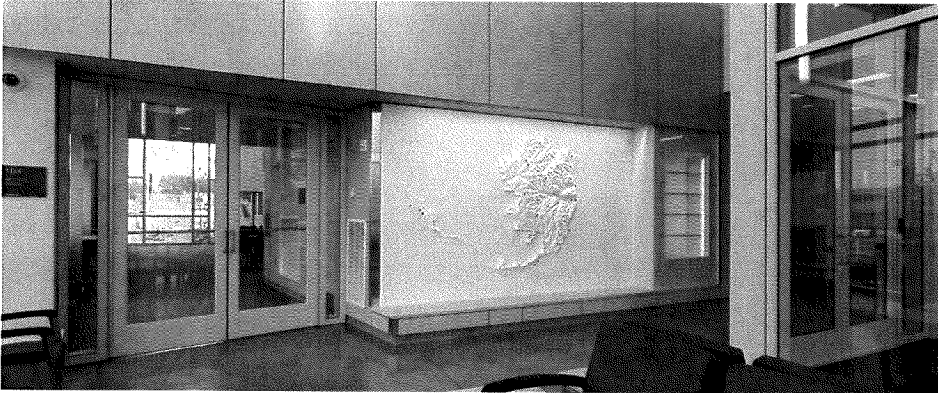
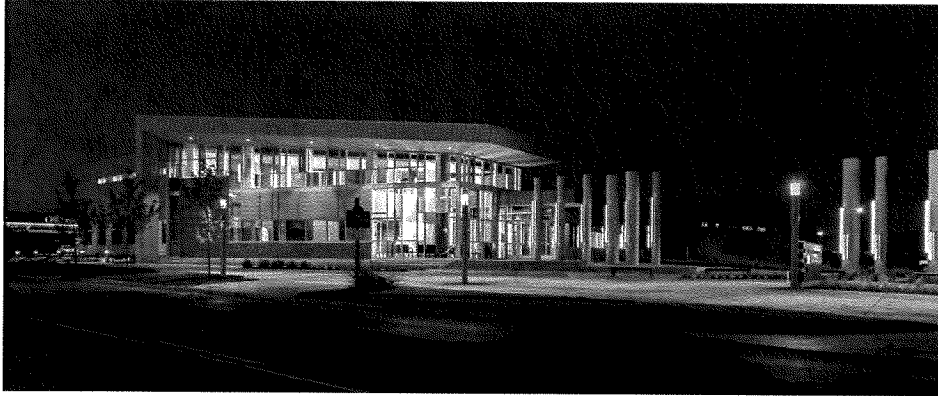
### **General Service Administration**

I would like to address the construction company that was involved in our recent renovation project located at the NRC in Cincinnati Oh.

Messer construction and there crew were a big part in getting our big project done. They were always available to answer questions and go over the steps of the project. They communicated when there were issues and took care of the ASAP. The employees were all professional and did a quality job even when we were under a short time frame during certain phases. They understood the process that is required for government jobs and worked well with GSA. The project manager Scott Parker was always available and addressed any concerns or questions. They went above and beyond to get the project done quickly and professionally. I would recommend them for any future jobs.

Thanks

Doane, Robin S.  
Security and Faculties Specialist  
Alcohol tobacco tax and Trade Bureau  
513-684-2140  
Robin.doane@ttb.gov



**Award** 2017 Design Build Institute of America "National Awards of Excellence" award winner

## City of Cincinnati Police District 3 Headquarters

Cincinnati, OH

**Client**  
City of Cincinnati

**Project Value**  
\$15 million

**Architect**  
emersion DESIGN LLC

**Structural Engineer**  
emersion DESIGN LLC

**Assignment**  
Preconstruction and Design-Build  
CMAR

**Project Completion**  
June 2015

**Mechanical Engineer**  
CMTA, Inc.

**Civil Engineer**  
Genesis Design LLC

### Description

- + 39,000 sf police station
- + Geothermal mechanical systems
- + LEED Platinum certified
- + 2017 Design Build Institute of America "National Awards of Excellence" award winner

### Why Messer

Messer was selected to lead this project due to our team's commitment to a comprehensive and fully integrated approach to construction.

### Owner Contact

Joel Koopman and Jamie Accurso  
City of Cincinnati  
1408 Queen City Avenue  
(513) 352-5403  
joel.koopman@cincinnati-oh.gov  
jamie.accurso@cincinnati-oh.gov

### Owner Reason for Building

The current District 3 building, constructed in 1908, is both structurally and technologically obsolete - lacking sufficient parking, community space and space for staff and storage. The new City of Cincinnati District 3 Headquarters has improved access to service for 14 neighborhoods, across 20 square miles.

### Unique Challenges and Features

- + This facility is a Net Zero Energy facility - this means the building produces more energy than it consumes.
- + During preconstruction our team created a plan to use precast panels rather than masonry. This maintained the aesthetics of the building while reducing both cost and schedule.
- + Our team developed a plan to exceed 36% Small Business Enterprise participation.
- + Initial cost and final cost matched. The project finished at the desired budget.

Monday, May 22, 2017



To whom it may concern:

I served as Project Manager for the City of Cincinnati's new District 3 Police Station. As such, I worked very closely with the selection team, user group and design/ build team throughout the process. In trying to summarize the numerous achievements of the process and the final product, there are four primary aspects of the service provided by the Messer/ emersion DESIGN team which drove the process and ultimately paved the way for the success of this built work: Client-centric Problem Solving, Speed with Unparalleled Quality, Cost Effective Elite Sustainability and Meaningful Community Engagement.

#### Client-centric Problem Solving

Throughout the design/ build process, the Messer/ emersion DESIGN team was essentially on call to resolve issues in design or construction. From the initial project proposal it was clear that the team was looking for solutions to maximize the functional operations and improve the day-to-day use of the facility by the staff working there and the community engaging them. After that the team immediately engaged the client and user groups to ensure the program elements were understood. They even tested the police equipment to determine the most appropriate way to address the need to manage and maintain this vital equipment. The team asked lots of questions and tested their assumptions which lead to more questions to reveal valuable insight into the people and processes and enabled the team to increase the value without increasing the costs. They were very thorough and thoughtful in their design and construction process. The team was responsive, efficient and fair; which allowed for changes and refinements to be integrated smoothly without slowing the process or increasing costs.

#### Speed with Unparalleled Quality

One of the premier points of their delivery was the speed in which they delivered a 75 year building to the City. Packages were fast tracked to get the project in ground as soon as possible. The design decision to use precast concrete wall panels over brick unit masonry provided a preferred assembly allowed Messer to erect 156 panels in 9 days. This allowed the building to get enclosed very quickly, which helped protect the indoor environment quality and materials. There was an unforeseen condition, a buried retaining wall, that should have delayed the project by 6 weeks. Because site and building foundations were in construction while the construction documents for the building were being completed, the project team was able to take this in stride. The construction scheduling and oversight by Messer kept the project on track and they were able to continually stay ahead of the milestones and provide ample time for final touches leading up to the delivery date. In the end, turnover was less hectic and stressful.

#### Cost Effective Elite Sustainability

The team created a plan that satisfied our base set of criteria which came in approximately \$1 million less expensive than their competitors. This in turn allowed the City to look at value based betterments. In the end, the City selected all 4 betterments - 3 of which were centered on sustainability. For the same cost as their competitors' LEED Silver design, the Messer/ emersion DESIGN team delivered a beautiful, highly functional LEED Platinum/ Net Zero Energy civic structure. The building currently tracking below 27 EUI (kBtus/ square foot/ year) and is running Net Positive for its renewable energy output. This nation-leading building has put the City of Cincinnati on the leading edge of cost effective, high performance building design and construction and is the flagship building in Cincinnati's building portfolio.

#### Meaningful Community Engagement

The Messer/ emersion DESIGN team focused on an enhanced public outreach program. They facilitated 3 public at large events, plus 12 Community Advisory Team sessions. These sessions allowed the 14 served neighborhoods the ability to weigh in on the design of many attributes including the plaza, landscaping, column, graphics and art designs. This process made the

design better and gave the public a voice to tell the stories important to the west side of Cincinnati. In turn, the public participants became advocates in the process, the building, the City and most importantly - the police. This occurred at a very stressful time in police/ public relations locally and nationwide. Further, the design/ build team included 41.6% of their contracts to women and/ or minority firms, besting our requirement of 30% by a substantial amount. At the time of the building's dedication and grand opening it was clear that the process had made a real impact as community advisory team participants proudly pointed out their contributions to the public touring the new facility.

The District 3 police station continues to serve beyond any typical boundaries. This project changed the way the City procures design services. Our most recent RFQ included an EUI target to let design firms know that the City takes energy efficiency very seriously and convey these expectations upfront. In short, we wish that every one of our projects would run this smoothly, finish this quickly and with this high of quality, be this sustainable, engage the public this infectiously and present the value that this project has to the police, the City and its citizens.

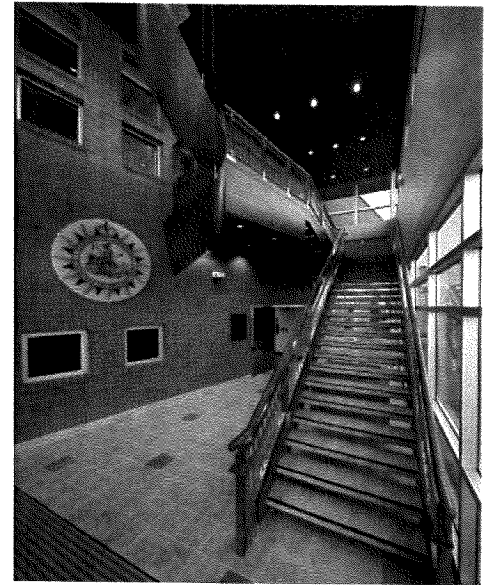
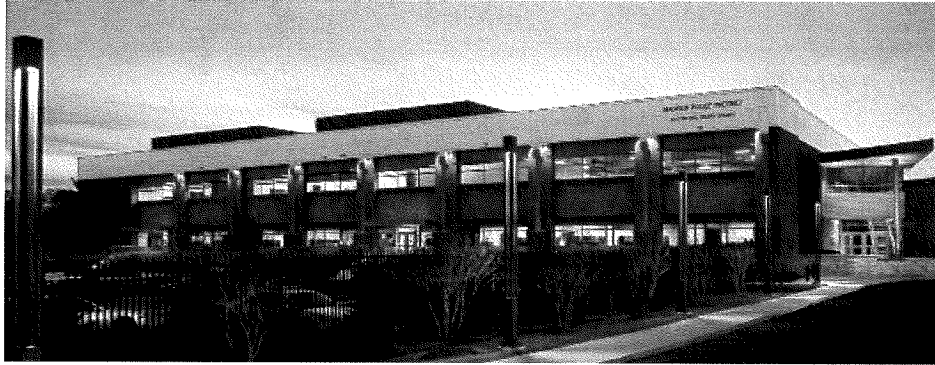
It was an enriching experience to work with this design-build team, one that I feel exemplifies the value and intent of the design-build process; and for this achievement the design-build team of Messer and emersion DESIGN should be recognized and applauded by the DBIA.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Accurso". The signature is fluid and cursive, with the first name "Jamie" being more prominent than the last name "Accurso".

Jamie Accurso, AIA  
Facilities Manager  
City of Cincinnati  
Department of Public Services





Associated  
General Contractors  
"Build Tennessee" Award

## Metropolitan (Metro) Government of Nashville & Davidson County Madison Police Precinct & Crime Lab

Nashville, TN

### Client

Metropolitan Government of  
Nashville & Davidson County

### Project Value

\$30 million

### Architect

Thomas, Miller & Partners

### Structural Engineer

EMC Structural Engineers

### Assignment

Construction Manager with a  
Guaranteed Maximum Price

### Project Completion

December 2013

### Mechanical Engineer

Smith Seckman Reid, Inc.

### Description

- + Renovated a manufacturing plant into a 25,000 sf police precinct and 40,000 sf crime lab
- + Includes drug identification laboratory, firearms & tool mark unit, DNA laboratory, toxicology laboratory, technical investigation scene, firing range with ballistics tank, bullet-proof reception area and HVAC shut-off controls
- + LEED Silver certified

### Why Messer

Metropolitan Government of Nashville & Davidson County once again chose Messer to lead their construction efforts due to past success together. Our project team used innovative tools, such as Building Information Modeling (BIM) to increase efficiency and decrease waste during construction.

### Owner Contact

Dianna Stephens  
Metro, Retired  
(615) 642-2913

Charlie Ingram  
Metro, Project Manager  
1417 Murfreesboro Rd.  
Nashville, TN 37219  
(615) 862-4777  
(615) 880-2637

### Owner Reason for Building

In 2010 Nashville was in the midst of a crisis - serious crimes in their northern neighborhoods were growing at an alarming rate. The addition of this precinct decreased the size of the surrounding jurisdictions enabling the police force to create a tighter bond with the communities they protect and serve. The renovated facility also streamlined the workflow at the crime laboratory.

### Unique Challenges and Features

- + Each piece of the existing facility was removed, leaving only the original structural steel. The structural steel was then strengthened to meet the stringent requirements set for the strength of a police precinct's structure.
- + A second floor was added within the building's interior, doubling the square footage.
- + Due to size, some of the specialized equipment had to be delivered prior to the walls being built.
- + The indoor firing range with ballistics tank required special designs - including a self-contained HVAC system due to lead latent air in the firing range.
- + Initial cost and final cost matched. The project finished at the desired budget.

**Messer**  
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Metropolitan Government  
of Nashville and Davidson County

Karl F. Dean, Mayor  
Nancy Whittemore, Director



Department of General Services

730 2<sup>nd</sup> Ave South  
P.O. Box 196300  
Nashville, TN 37219-6300  
615-862-5050, 615-862-5035 (Fax)

December 20, 2013

Dear Reader,

I recently worked with Messer Construction Co. to complete the Madison Police Precinct & DNA Crime Lab. This project renovated a shuttered 42,000 sf manufacturing plant into an 84,000 sf crime lab and police precinct. The DNA Crime Lab will enable Metro Nashville & Davidson County process our own evidence and DNA, rather than relying on the Tennessee Bureau of Investigations. We are excited about the positive impact this facility will have on the safety of Nashville and Davidson County.

I was continually impressed by the Messer team, specifically in the following areas:

**Project Safety** – The project site was directly adjacent to our temporary precinct as well as offices for the MTA. Messer was diligent in ensuring the Madison officers had a secure parking area as well as maintaining a safe environment for the public and MTA employees. Messer's vigilance in project and public safety resulted in zero recordable accidents and zero public incidents.

**Material Constraints** – Much of the equipment in the crime lab is highly unique and complex. This equipment required extremely long lead times and working with international suppliers. Messer began planning before construction even began for these items. They utilized innovated tools, such as Building Information Modeling and mockups, to ensure once these items were appropriately planned for.

**Quality Focus** – Throughout the project it was clear Messer was concerned with not only providing a high quality building, but with providing a high quality building that will last for decades. As we prepare to open our new police precinct and crime lab, it is clear this is certainly the case.

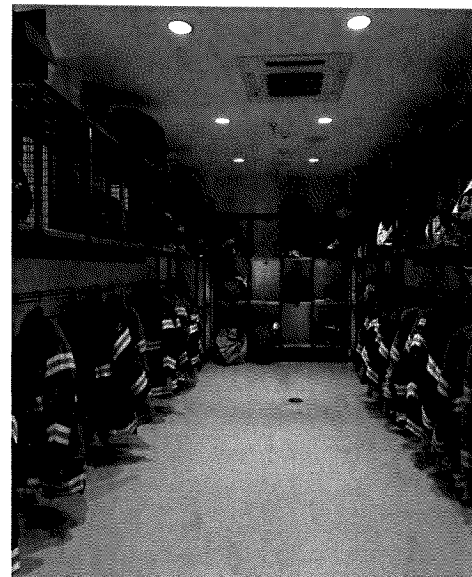
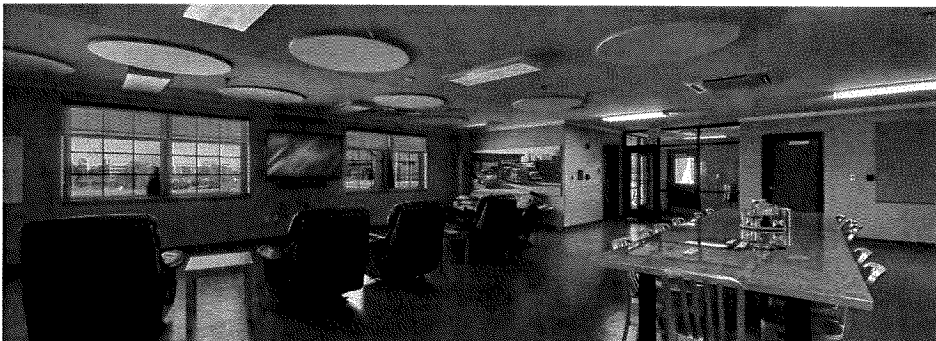
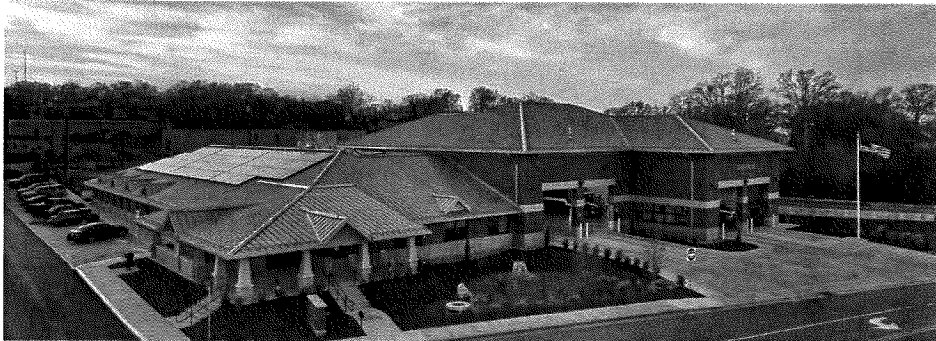
This renovation not only transformed an abandoned building into a police precinct and state-of-the-art crime lab, this renovation has transformed the way Nashville and Davidson County investigate crime in our neighborhoods. I am grateful for the expertise provided by the entire Messer team and would not hesitate to work with them again.

Sincerely,

A handwritten signature in cursive script that reads "Charlie Ingram".

Charlie Ingram  
Project Manager  
(615) 880-2637





**Award**  
Governors Environmental  
Stewardship  
"Building Green" Award (Station 19)

## Metropolitan (Metro) Government of Nashville & Davidson County Fire Stations 3, 11, 19, 21, 30, 31, 33

Nashville, TN

### Client

Metropolitan Government of  
Nashville & Davidson County

### Project Value

\$32.1 million

### Architect

Thomas Miller & Partners; Gobbell  
Hays Partners

### Structural Engineer

EMC Structural Engineers

### Assignment

Construction Manager with a  
Guaranteed Maximum Price

### Project Completion

October 2015

### Mechanical Engineer

Envision Engineering

### Civil Engineer

Barge Cauthen & Associates

Since the Metro Nashville Fire Department (MNFD) began serving the region in 1860, their service area has grown from six square miles to 550 square miles. To minimize their response times, MNFD replaced seven of 39 fire stations. All stations listed are LEED Silver, except for Station 19, the first fire station in the Southeast to receive LEED Platinum certification.

### Description

- + Fire Station 3: 16,000 sf, two-story
- + Fire Station 11: 15,600 sf, two-story
- + Fire Station 19: 20,500 sf; described further at right
- + Fire Station 21: 19,500 sf
- + Fire Station 30: 19,500 sf
- + Fire Station 31: 16,000 sf, two-story
- + Fire Station 33: 21,000 sf

### Owner Contact

Nancy Whittemore, Director of General Services  
Metropolitan Government of Nashville and Davidson County  
P.O. Box 196300  
Nashville, TN 37219  
612-830-1191  
nancy.whittemore@nashville.gov

### Unique Challenges and Features - Station 19

- + First fire station in the Southeast to receive LEED Platinum certification.
- + Earned LEED Innovation Points for Exemplary Performance for On-Site Renewable Energy and use of Regional Materials with 63% of construction waste diverted from landfill and 16% recycled content in building materials.
- + Messer delivered 43.92% energy cost savings (as compared to a baseline building).
- + The facility features a vehicle exhaust system in the apparatus bay and complete electrical circuit monitoring by smart electrical panels.
- + Building Information Modeling (BIM) enabled our team to virtually model the facility's mechanical, electrical and plumbing systems prior to construction increasing the reliability of the construction schedule.
- + The initial costs matched the final costs except for owner-driven changes on some of the stations. For example, on Station 19, the owner asked us to increase the booster bump and overhead paging system, resulting in a change of \$194,740. All projects finished at the desired budget.

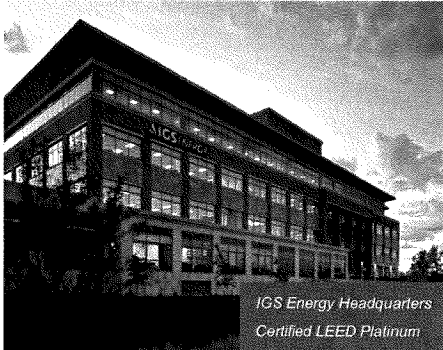
**Messer**

WeAreBuilding.

4. The company's experience in building LEED certified buildings.

All of the projects shared in the previous section have achieved a level of LEED certification, including the first fire station in the Southeast to receive LEED Platinum certification and the 1<sup>st</sup> LEED Platinum, Net-Positive Energy police station in the world.

Matt Miller, your project's MEP/Security/IT Superintendent is a LEED AP authorized by the Green Building Certification Institute BD+C and a Certified Energy Manager (CEM) authorized by the Association of Energy Engineers. We have the expertise on our team to meet any sustainable goals for your project.



#### Proven Results

“It was important that we met our space planning goals, LEED goals, budget goals, and time constraint parameters. Messer's performance was excellent on all accounts and always approached matters in a businesslike manner.”

Mr. Scott White  
President and CEO  
IGS Energy

#### Benefit

- + Experienced builders ensure you achieve your sustainability goals

Messer has put in place more than \$1 billion worth of LEED certified and high-performance buildings. This experience accounts for more than 5 million sf of construction for commercial, health care and higher education clients. We understand the environmental and economic benefits of green design and building.

Messer has the following resources, skills and experience to met our clients' sustainable construction goals:

#### Green Building Approach

Our strategy for achieving LEED certification goals includes leading design charrettes to establish sustainability expectations; involving the design team and subcontractors in the green building process and educating all stakeholders in LEED Certification to ensure a complete understanding of the process.

#### LEED Champions

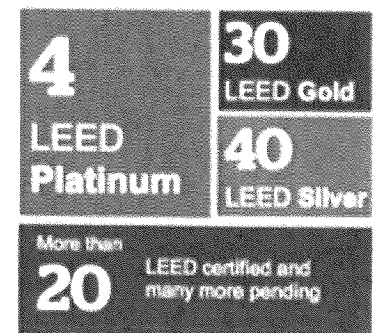
Messer has more than 50 LEED Accredited Professionals and 25 LEED Green Associates. These construction experts will guide your team in an effort to meet sustainability goals.

#### Building Systems Group (BSG)

Fundamental commissioning is a prerequisite for the LEED certification process. Our BSG team ensures mechanical, electrical and plumbing systems work as promised and appropriate documentation is presented to the design team for submission to the United States Green Building Council (USGBC).



#### LEED Project Experience





5. Summarize the company's experience in using and mentoring disadvantaged businesses in projects of similar size and scope and provide recommendations for attaining the City's DBE goals. Provide written assurances of the company's ability and intention to use its best efforts to assist the City in meeting the DBE participation goals stated in the Diversity Business Enterprise Program form of this RFP, for both pre-construction and construction phases.

We understand the City of Knoxville and Mayor Rogero are dedicated to promoting a vibrant local economy, strong neighborhoods, a high quality of life, a thriving downtown and a greener Knoxville. We also agree that Knoxville's strength comes from the diversity of its people.

Messer knows how to maximize DBE participation, as evidenced by the projects we've described in response to question 3 in this section, with results as high as 43% DBE inclusion.

### DBE Inclusion

Messer is committed to leadership in creating economic opportunities for all segments of our communities. We believe sustainable change requires strategic relationships and a commitment of resources and capital. If we are to sustain growth and continue to compete in this ever-changing business environment, it is imperative that our economic inclusion initiatives continue to support and uplift the communities in which we live and work. Messer is fully committed to implementing inclusion plans and strategies that will maximize DBE participation for the project.

Our goal is not only to meet, but to exceed your DBE goals. Sonya Walton, Vice President of Supplier Diversity will lead our project's DBE inclusion plan, outreach and compliance initiatives. Sonya has more than 20 years of experience in the area of diversity, inclusion, and compliance for the construction industry. A Certified Professional of Supplier Diversity by the Institute of Supply Management, Sonya has successfully developed and implemented strategies across the Midwest for projects of all sizes. Sonya also has extensive experience in working with prime subcontractors to assist in developing inclusion strategies for second and third tier levels. **Sonya, along with the Economic Inclusion team recently won the 2018 Professional Women's Magazine Best of the Best for Supplier Diversity.** Her efforts have contributed to the success of exceeding inclusion goals for major capital improvement projects throughout the Midwest and have led Messer to receive numerous Diversity awards.

### DBE Success

Messer will develop a project-specific program for how we will achieve inclusion in the design, preconstruction, and construction phases of the building program. Beginning with our initial outreach session and continuing through meet the prime outreach, work package development, community awareness/ advertising opportunities, DBE prequalification, non-traditional contracting services and mentor/protégé program leading to training and workforce development.

A key part of our community action plan is to assist DBE firms in their individual growth and development that will prepare them for continued success, capacity building, and the opportunity to pursue future larger and more complicated projects in Louisville and the surrounding areas. **This inclusion strategy has resulted in our firms continually exceeding DBE goals on projects across the U.S. for many municipal owners.**



# Participation Strategies

## Executive Appointed Oversight Leader

- + Economic inclusion cannot be the sole responsibility of our Inclusion Department or executive team. To be successful the message, objectives and best practices must be ingrained in our organization to ensure inclusion remains a core component of Messer's culture.
- + It is critical for all Messer employees, specifically project leaders, to embrace our inclusion objectives and implement best practices. Messer has developed a successful model to train and provide these individuals the tools and resources necessary.
- + Proposed Senior Project Manager Doug Downey will be responsible for working closely with the City and our Inclusion team to ensure best practices and the required DBE policies are implemented and executed.

## Bid Packages

- + While the project scope, budget and schedule are being developed a basic breakdown of phasing and bid packages at specific dates enables targeted inclusion opportunities. As each of these packages are finalized we will determine the breakdown of trade contracts for the defined scope of the work. This will be done with the knowledge of the capability of the local market to maximize economic inclusion opportunities.

## Bid Specifications & Communication of DBE Participation Expectations

- + All bid specifications will include DBE specific specifications and forms that inform bidders they will be required to submit certified DBE participation information, and award of the contract will take these requirements into account.
- + The expectations contained in the bid specifications must be communicated to all bidders and trade contractors in order to be successful. The basics of the plan must be communicated to the construction community during all outreach sessions, pre-bid meetings and in the bid documents.



## Bid Release

- + If possible, bid documents (invitation to bid, plans and specifications) may be issued at least three (3) weeks prior to bid opening to allow meaningful and fair opportunities to the DBE community.

## General Marketplace Communication

- + Messer may elect to perform general outreach activities as appropriate and required to effectively communicate to the community at large. These activities may be performed in tandem with project-specific outreach activities.
- + Such outreach activities may be done in conjunction with other constituencies and may address all project topics, including DBE participation.
- + This outreach may take on many different forms such as community newsletters, Internet websites, dynamic site signage and traditional town-hall-type meetings.

## Conduct DBE Outreach Informational Session

- + Invite DBE subcontractors/suppliers, potential prime contractors and local community organizations. During this meeting, Messer will inform the local business community about the project, including:
  - Description of the current project including scope, budget and schedule
  - Preliminary bid package approach
  - Timing of future bid package-specific outreach efforts
  - Project DBE participation goals



## Conduct Mixer Outreach Events

- + The traditional approach of waiting for the start of active bid periods to perform outreach activities does not allow enough time for strategic relationships that lead to long-term meaningful experiences to be established.
- + Mixer Outreach Events bring the construction community together before construction bid documents are issued to the marketplace. Mixer Outreach Events are different than the DBE Outreach Informational Sessions due to the fact that the Mixer Outreach Events are scope-specific only - this allows DBE companies to connect with firms bidding on specific prime contracts
- + We will inform firms they must be certified under the authority of an entity recognized by the City
- + A significant focus will be placed on maximizing attendance by both DBE and majority firms.
- + The following activities, lead by Messer, will encourage attendance:
  - Place phone calls to local DBE
  - Contact majority and/or prime contractors

## Pre-Bid Meetings

- + DBE subcontractors / suppliers, potential prime contractors and local community organizations will be invited to pre-bid meetings. During this meeting, Messer will communicate the importance of DBE participation as a criterion for trade contract award recommendations.
- + To better foster networking relationships, information regarding meeting attendees will be compiled to allow for possible second tier subcontractors to be included in the bidding process and be recognized/ solicited by all prime bidders.
- + The pre-bid sign-in sheet will be sent to all DBE plan holders.

## Establish "Labor Only" Bid Packages in Selected Cases

- + These contractors install materials that are owner or CM purchased. This helps in regard to cash flow and bonding capacity limitations diverse subcontractors and suppliers often face.

## Technical Assistance

- + We will provide technical assistance during the bidding process by directing our suppliers to organizations that

## Bid Notification, Outreach Communication & Advertisement

- + Send Bid Notification via email to Messer's list of Community Outreach Organizations & Certifying Agencies requesting dissemination to their members.
- + Advertise Bid Notification with local news papers.
- + Local minority trade and community outreach support organizations will be enlisted.
- + Utilize Messer's DBE directory and iSqFt bidding notification database of certified, DBE firms to ensure they are included on bid invitation lists and identify DBE firms that may qualify to act as prime contractors.
- + DBE firms and suppliers will be notified via email and phone of upcoming bid opportunities and targeted dates for bid package releases and pre-bid meetings.

## Bid Award Phase

- + Review all bid submittals of supplier diversity plans to verify diligent efforts were taken towards the inclusion and utilization of DBE and minorities and women.
- + Conduct bid-award meetings to communicate and reiterate the DBE participation goals for the project and to discuss required monthly DWBE utilization reporting submittals.
- + Review DBE certifications of all participating DBE to verify they are certified to provide the services being provided on the project.

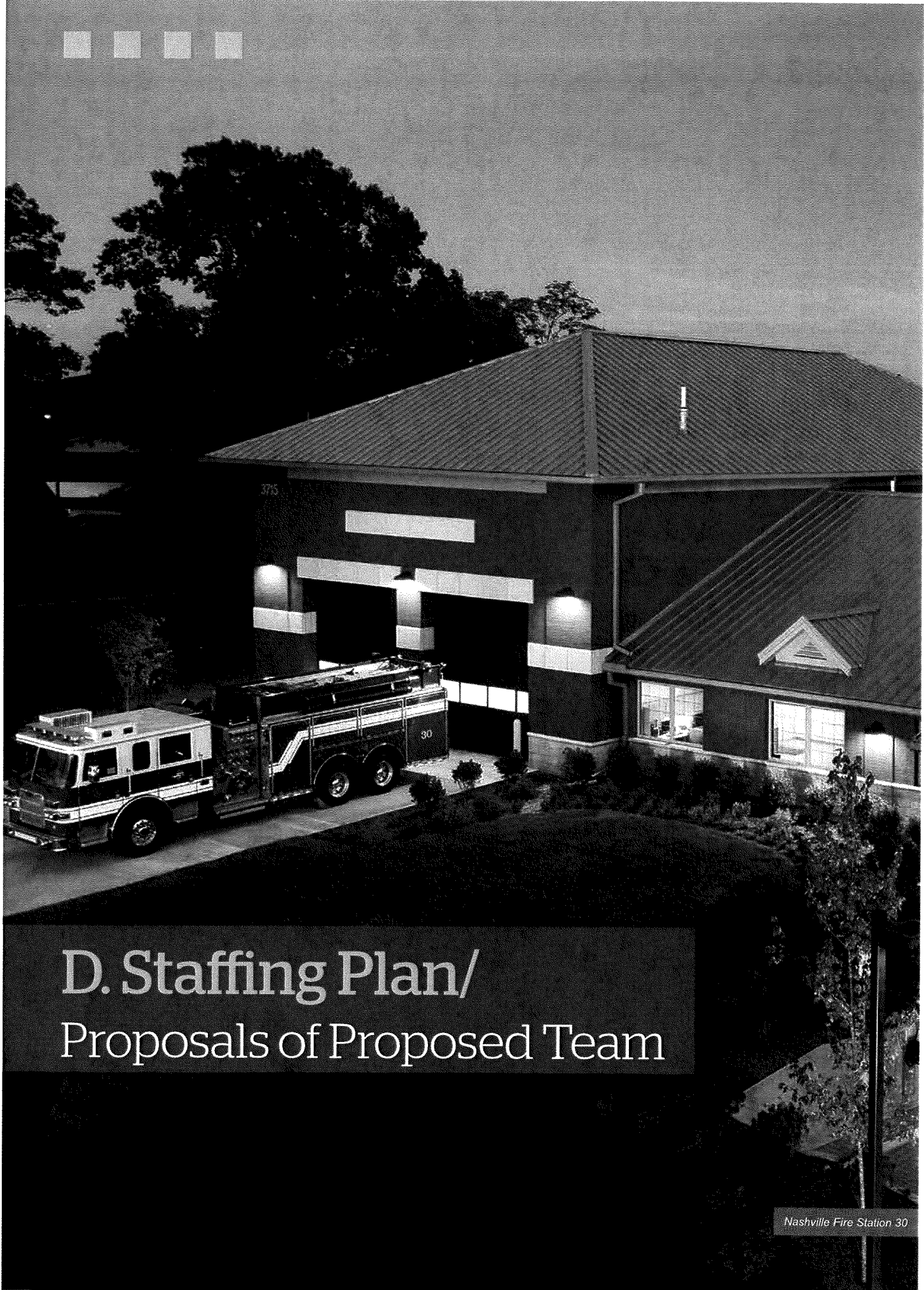
## Post Bid Award Phase

- + Require prime and subcontractors to submit monthly reports for DBE contracting participation.
- + Monitor contracts and change orders for DBE participation.
- + Collect, prepare and analyze detailed monthly reports of DBE utilization.
- + Submit monthly Supplier Diversity and Workforce Diversity reports .
- + Utilize relationships with community organizations and associations to promote business diversity and local involvement in the project.

***"Messer has exclusively been assigned women and minority construction firms because of their focus and corporate charge to work with these firms. Messer has been one of the most devoted and involved mentors in our program. Messer has proven itself to be a 'true and authentic' example of economic inclusion in our region."***

***Doug Minter  
Business Development Manager  
Knoxville Chamber of Commerce***





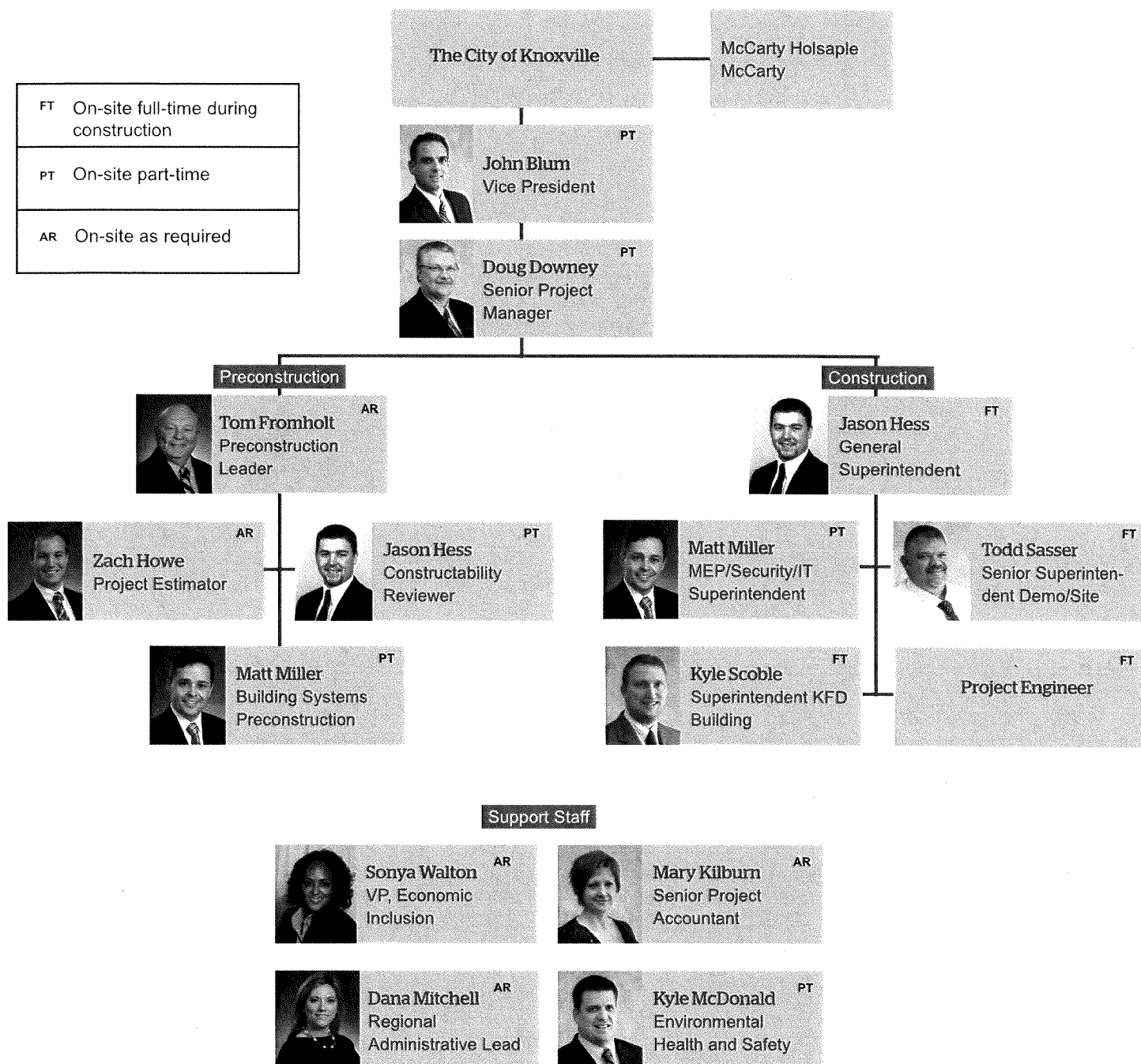
# D. Staffing Plan/ Proposals of Proposed Team

D. Staffing Plan / Proposals of  
Proposed Team

Nashville Fire Station 30



1. Provide a chart identifying key individuals on the pre-construction and construction phase team(s) and their respective responsibilities. Indicate who will be on site and which will not.



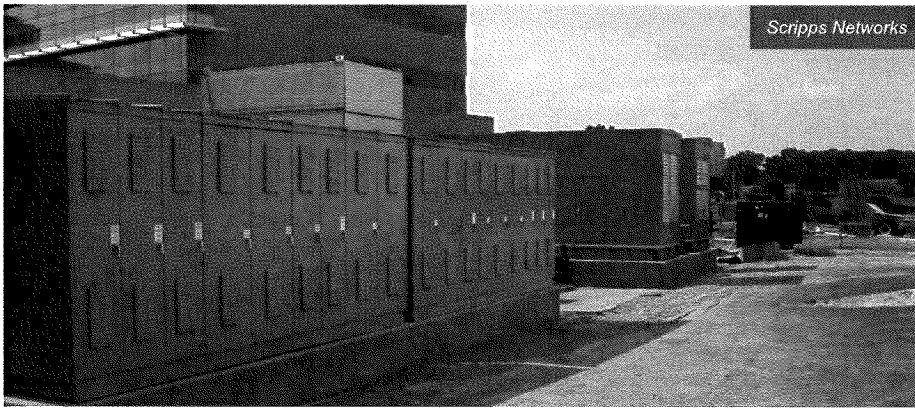


2. Submit current resumes of the proposed team members including their experience (one page) and specifically identify their experience on projects of similar size and complexity.
3. Provide the current availability of proposed team members in relation to other assigned projects.

Our team members are ready to start your project. Resumes follow. Below is an outline of their experience relative to the items you've emphasized on page 25 of your RFP. Each resume lists additional reasons why they are the right team members for The City of Knoxville.

	Worked on projects in excess of \$35.5 million	Experience with both renovation and new construction	Kept facilities in operation during construction	Project required DBE facilitation	GMP Project Experience
John Blum Vice President/ Region Leader	✓	✓	✓	✓	✓
Doug Downey Senior Project Manager	✓	✓	✓	✓	✓
Jason Hess General Superintendent	✓	✓	✓	✓	✓
Matt Miller MEP/Security/IT Superintendent	✓	✓	✓	✓	✓
Todd Sasser Sr. Superintendent Site/Demo	✓	✓	✓	✓	✓
Kyle Scoble Superintendent KFD Building	✓	✓	✓	✓	✓
Tom Fromholt Preconstruction Leader	✓	✓	✓	✓	✓
Zach Howe Lead Estimator	✓	✓	✓	✓	✓
Sonya Walton VP, Inclusion	✓	✓	✓	✓	✓
Kyle McDonald Environmental Health & Safety	✓	✓	✓	✓	✓





## John Blum

Vice President/ Region Leader  
B.S., Civil Engineering, University of Cincinnati

### Background

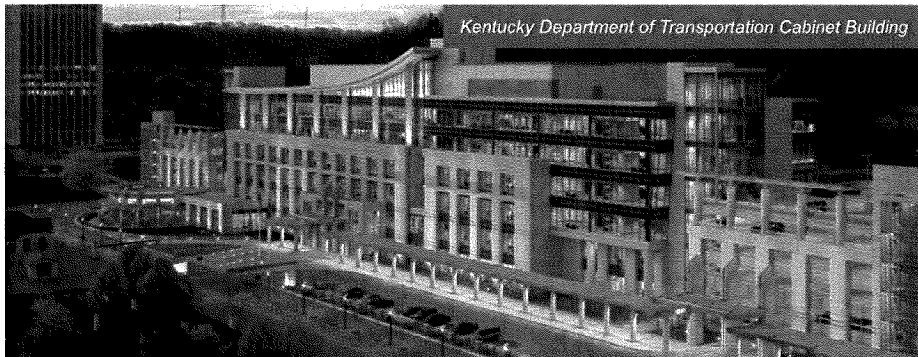
- + John's leadership and extensive complex construction experience will be of great benefit to your project
- + 23 years with Messer

### Role

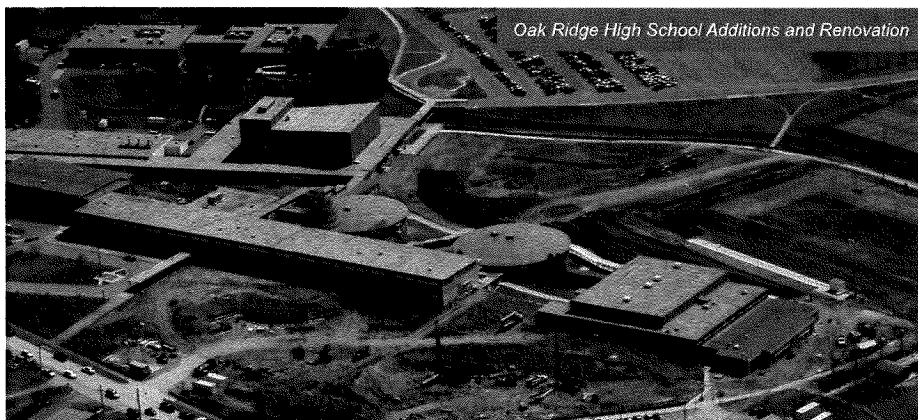
- + Works with the project team to set overall goals
- + Assumes ultimate responsibility for project success
- + Provides executive-level assistance to allocate Messer's resources and commit experience to the project team as needed
- + Ensures the site staff has the proper tools and resources to effectively monitor and control the level of quality during construction

### Select Project Experience

- + Tennessee School for the Deaf Campus wide ADA improvements - kept buildings operational and protected all inhabitants
- + Carter Elementary School
- + PBA of Knoxville Term Contracts
- + Hamilton County, Ohio Courthouse Renovation Phase II - Renovation of the interior space on two floors of the Common Pleas Courthouse, building repairs infrastructure upgrades and new mechanical systems
- + Cincinnati Financial Corporate Office Tower - \$102 million 450,00sf, 9-story office complex
- + Northeast State Community College Technical Education Complex
- + Maryville Civic Arts Center
- + Scripps Networks Critical Infrastructure/ Data Center renovation
- + Scripps Networks Broadcast Operations Center Renovation
- + Discovery Fitness and Wellness Center
- + UHS UT Family Physicians



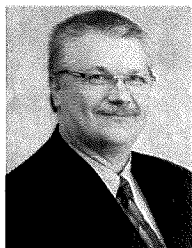
Kentucky Department of Transportation Cabinet Building



Oak Ridge High School Additions and Renovation



McGhee Tyson Airport Rescue and Fire Fighting



## Doug Downey

Senior Project Manager

B.S., Agriculture,  
University of Kentucky

### Background

- + Doug's seasoned experience leading complex phased construction will prove invaluable to your project
- + 31 years with Messer

### Role

- + Functions as the administrative lead of the project
- + Provides executive-level support during the construction phase for the on-site management team
- + Analyzes the risks of the project and creates a project-specific quality assurance and control plan
- + Ensures the site staff has the proper tools and resources to effectively monitor and control the level of quality during construction

### Select Project Experience

- + Knoxville Utilities Board (KUB) FOC Server Room Renovation (2013)
- + Knoxville Utilities Board (KUB) Field Operations (OHC) Renovation
- + PBA Miscellaneous Projects 2010 and 2012
- + Oak Ridge High School Addition and Renovation - \$51 million renovation with 22 phases in an active high school with 1,500 students; LEED Silver
- + Lexington/Fayette Urban County Government Courthouse General Trades Package - Municipal court experience
- + McGhee Tyson Airport Rescue and Fire Fighting Facility 29,000 sf two-level facility with space for the airport's emergency operations center
- + Kentucky Department of Transportation Cabinet Office Building - \$81 million office building
- + Northeast State Community College Technical Education Complex
- + Pellissippi State Technical College Blount County Campus Improvements
- + Pellissippi State Technical Bagwell Media Arts Center



## Jason Hess

General Superintendent  
B.A., Accounting, University of Cincinnati

### Background

- + Jason worked as a Messer laborer while earning his degree and was hired full-time after graduation
- + After working in our Columbus, OH region, Jason has relocated to Knoxville to live and work full-time
- + Over 20 years of experience

### Role

- + Serves as the driving force behind quality, cost, schedule and safety goals
- + Ensures the project meets or exceeds client expectations
- + Coordinates communication between owner and design team
- + Empowered with full authority to make decisions on-site to meet project needs
- + Implements the construction plan, ensuring all construction activities are carefully organized and appropriately communicated to all stakeholders

### Select Project Experience

- + **OhioHealth** 47 projects during 3 year span in active hospitals where operations were maintained, including critical systems infrastructure project
- + Roxane Laboratories (now Hikma) - Main Entrance, Lobby and Guard House - Project had complex security and electrical requirements and stringent security requirements like Knoxville Safety complex
- + Nationwide Realty Investors 325 Building - 174,000sf office built on a site bordered on all sides by public streets and existing buildings
- + Ohio State University North Residential District - \$305 million, 11-building project where site security and safety were of utmost importance. Jason and his team kept students safe during this large-scale, occupied, phased multi-building renovation and new construction project. 2,600 students lived in the district during the project's first year and 3,600 students lived there during the second year of construction.
- + 5 Star Senior Living - large scale senior living project in Tellico Village



Metro Nashville Police Department -  
Police Headquarters & Family Justice Center



## **Matt Miller, LEED AP**

MEP/Security/IT Superintendent  
B.S., Mechanical Engineering  
Technology, Montana State University

### **Background**

- + Extensive Tennessee police and fire and office experience
- + Works as a proactive quality control element in both the preconstruction and construction phase
- + Matt's systems expertise is important for your project's security components and call center
- + More than 15 years of industry experience

### **Role**

- + Leads mechanical, electrical, plumbing, (MEP) security, IT verification, validation and planning
- + Assists on MEP budgets and supports value engineering and constructability processes
- + Works with project leader to develop accurate and descriptive bid packages for MEP contractors
- + Ensures subcontractors are installing all items correctly
- + Ensure systems work as designed before we turn the buildings over to you

### **Select Project Experience**

#### **Metropolitan Nashville Government**

- + Nashville Fire Department Stations:
  - + 11 (LEED Gold)
  - + 19 (LEED Platinum)
  - + 21 (LEED Silver)
  - + 30 (LEED Silver)
  - + 33 (LEED Silver)
- + Madison Police Precinct & Crime Lab (LEED Silver)
- + Midtown Hills Police Precinct (LEED Gold)
- + Police Headquarters & Family Justice Center (LEED Silver pending)
- + Howard Office Building and Data Center
- + Tennessee Plaza Fire Alarm & Interior Upgrades
- + T3 Metro Center Renovations
- + Agriculture Metrology Lab renovation
- + Sun Trust Plaza Office Building\*
- + Accredo Health Commercial Office\*
- + Electronic Arts Corporate Office (Phase 2)\*

*\* Work completed while with previous employer*





## Todd Sasser

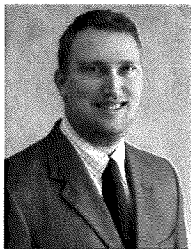
Senior Superintendent  
Demolition and Site Logistics

### Background

- + Todd's seasoned experience performing local industry construction will benefit your project
- + 20 years with Messer

### Role

- + Manages day-to-day subcontractor operations
- + Supervises craft employees including: assigning job responsibilities, evaluating productivity and providing recommendations to management
- + Ensures the sequence of work determined by the Reverse Phase Schedule is being followed in a manner consistent with quality and value
- + Reviews shop drawings, manages materials procurement, coordinates deliveries, ensures site accessibility, inspects work quality, and maintains a safe and efficient work site



## Kyle Scoble

Superintendent For Knoxville Fire  
Department Facility  
M.S., Civil Engineering,  
University of Tennessee  
B.S., Civil Engineering,  
University of Tennessee

### Background

- + Kyle's complex construction experience across Tennessee will be of great benefit to your project
- + 11 years with Messer

### Role

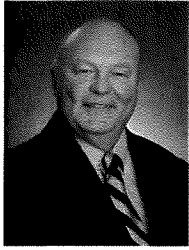
- + Serves as the driving force behind quality, cost, schedule, and safety goals
- + Ensures the project meets or exceeds client expectations
- + Coordinates communication between owner and design team
- + Manages all field-related items
- + Empowered with full authority to make decisions on-site to meet project needs
- + Implements the construction plan, ensuring all construction activities are carefully organized and appropriately communicated to all stakeholders

### Select Project Experience

- + \$51M Oak Ridge High School Addition and Expansion (LEED)
- + \$28.5M Valvoline Headquarters
- + \$21M Transit Authority of Lexington Corporate Headquarters Complex (LEED Silver)
- + \$1.9M Yamaha Motor Company Office Building
- + \$17M Aisin Automotive Casting Tennessee, Inc. Phase II
- + \$14M Scripps Interactive Technology & Data Center
- + \$1.8M Scripps Interactive BOC
- + \$37M Maryville College Clayton Center for the Arts
- + \$15M Pellissippi State Community College Blount County Campus
- + \$6.2M Berea College Anna Smith Hall Renovation

### Select Project Experience

- + \$51M, Oak Ridge High School Addition and Expansion (LEED)
- + Knoxville Utilities Board (KUB) FOC Server Room Renovation (2013)
- + Knoxville Utilities Board (KUB) Field Operations (OHC) Renovation
- + \$53M University of Tennessee Strong Hall Research Tower Building
- + \$22M University of Tennessee John D. Tickle Engineering Building
- + \$17M Aisin Automotive Casting Tennessee, Inc. Phase II
- + \$15M Pellissippi State Community College Blount County Campus
- + \$41M University Station Mixed-Use Complex



## Tom Fromholt

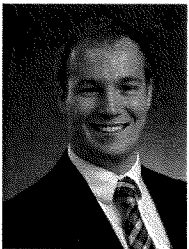
Principal Estimator  
B.S., Architecture,  
University of Notre Dame

### Background

- + In-depth knowledge of designers, owners, existing projects, key subcontractors and contacts in the marketplace
- + Has nearly 30 years of construction industry experience and has spent his entire career serving a dual role as an estimator and project manager: this means he has built what he priced

### Role

- + Provides senior level oversight, decision-making, risk assessment, and leadership
- + Ensures your project remains in budget while meeting or exceeding your goals



## Zack Howe

Estimating Manager  
B.S., Civil Engineering, Rose-Hulman  
Institute of Technology

### Background

- + Zack's knowledge and skill, combined with Messer's strong relationships with the local subcontracting community, will ensure we maximize your construction budget

### Role

- + Converts concepts to realistic budgets while reviewing plans for constructability and value engineering opportunities
- + Provides timely project cost estimates, cost studies, construction cost trend information and project budget updates

### Select Project Experience

#### Northeast State Community College Technical Education Complex

- + 130,000 sf, three-story classroom, lab, and office building for the new Emerging Technology Department
- + Complex higher education project located on an occupied campus; adjacent to an active airport

#### Knoxville Orthopedic Surgical Center

- + Two-story, 32,500 sf facility
- + First floor consists of four operating rooms, one procedure room and shell space for additional operating rooms
- + Second floor houses the corporate offices for OrthoTennessee, the parent company of Knoxville Orthopedic Clinic (KOC)

#### Maury Regional Health Complex Medical Office Building

- + 65,000 sf medical office building
- + Core and shell to support future tenant fit-outs
- + Interior fit-out of main lobby and common areas

### Select Project Experience

#### State of Tennessee

- + Tennessee Plaza Fire Alarm & Interior Upgrades
- + Northeast State Community College Technical Education Complex
- + Motlow State Community College Rutherford County Teaching Addition

#### Metropolitan Nashville Government

- + Police Headquarters & Family Justice Center (LEED certification pending)
- + Nashville Public Schools
  - + Stratford High School renovations (LEED Silver)
  - + Hume Fogg High School renovations (LEED certification pending)
- + Nashville Downtown Library Parking Garage Expansion
- + Bellevue Public Library (LEED Gold)



## Kyle McDonald

### Environmental Health & Safety Executive

B.S., Environmental Health Science,  
Ohio University

#### Background

- + Understands the challenges of managing safety on extensive and complex construction projects

#### Role

- + Assists the project team with regular safety inspections
- + Integrates site logistics with safety processes
- + Participates in development and implementation of general and site-specific training
- + Assists in investigation of new/innovative safety processes and equipment that improve outcomes



## Sonya Walton

### Vice President of Economic Inclusion

B.A. Business Administration,  
Indiana Wesleyan University

#### Background

- + 12+ years of supplier diversity experience

#### Role

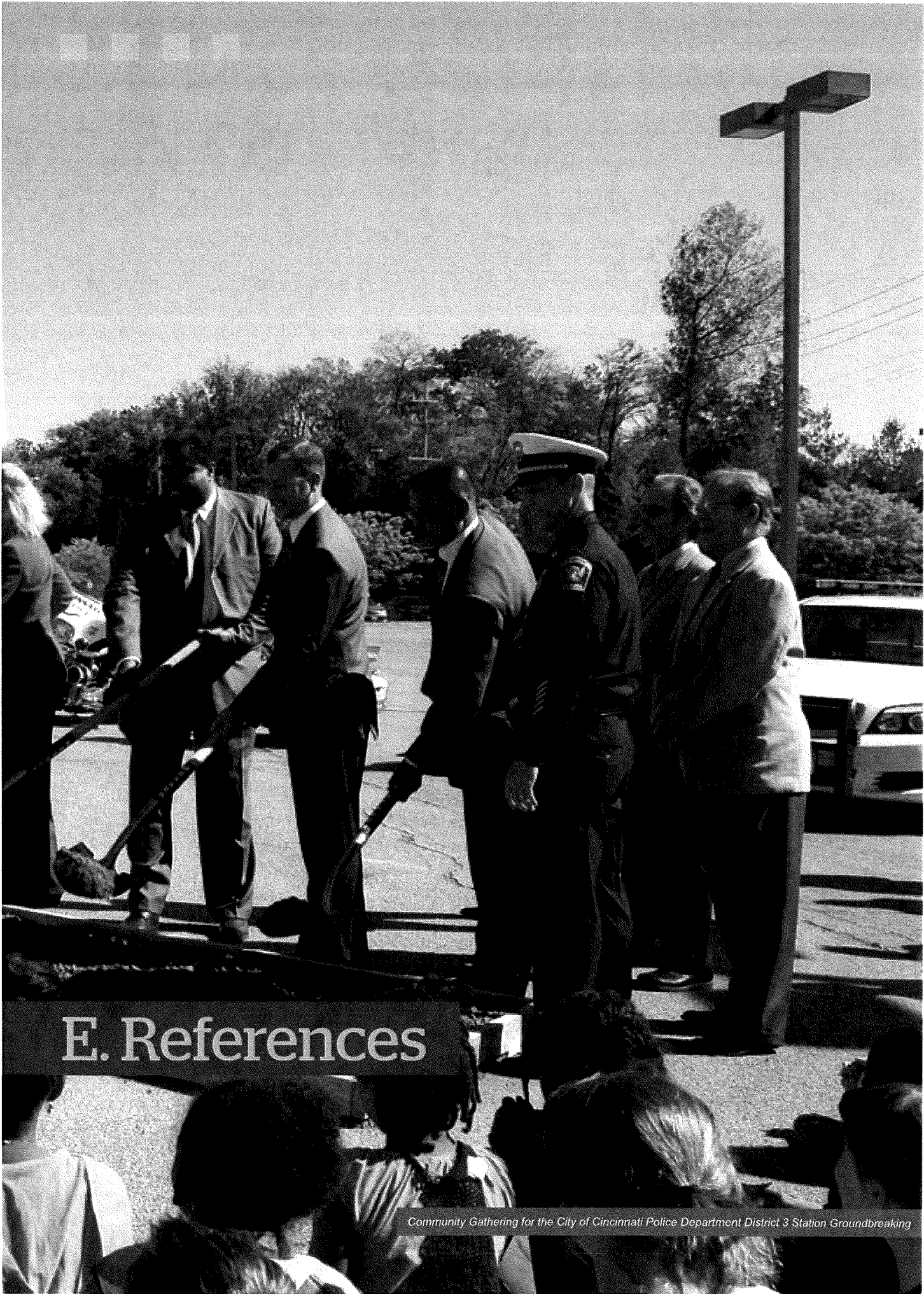
- + Works closely with project teams and external customers to engage M/WBE firms
- + Responsible for developing and leading all outreach activities to ensure the DBE communities are aware of the policies, procedures and opportunities, as well as managing database

#### Select Project Experience

- + Metro Nashville Police Department Police Headquarters & Family Justice Center (LEED certification in progress)
- + Knoxville Utilities Board (KUB) HOC Overhead renovation
- + Metro Nashville Police Department Midtown Hills Precinct (LEED Gold)
- + Nashville Fire Department - Station 11 (LEED Silver)
- + Nashville Fire Department - Station 19 (LEED Platinum)
- + Nashville Fire Department - Station 21 (LEED Silver)
- + Nashville Fire Department - Station 30 (LEED Silver)
- + Nashville Fire Department - Station 33 (LEED Silver)
- + KUB HOC Server room renovation
- + Oak Ridge High School Addition and Renovation (LEED)
- + Scripps Interactive Networks Technology Center
- + Cincinnati Financial Corporation Corporate Office Tower

#### Select Project Experience

- + Metro Nashville Police Department Police Headquarters & Family Justice Center (LEED certification in progress)
- + Metro Nashville Police Department Midtown Hills Precinct (LEED Gold)
- + Nashville Fire Department - Station 11 (LEED Silver)
- + Nashville Fire Department - Station 19 (LEED Platinum)
- + Nashville Fire Department - Station 21 (LEED Silver)
- + Nashville Fire Department - Station 30 (LEED Silver)
- + Nashville Fire Department - Station 33 (LEED Silver)
- + Kenwood Place Corporate Office
- + PayCor Corporate Office
- + Eli Lilly Office Expansion
- + Messer Construction Co. Corporate Office Building (LEED Gold certification in progress)



## E. References

Community Gathering for the City of Cincinnati Police Department District 3 Station Groundbreaking





E. References A list of references for the Submitting Firm and any sub consultants involved in the project for similar work performed at other Municipal Facilities including Comparable Police, Fire HQ , Courts and/or locations.

### Municipal/Government References

Nancy Whittemore, Director of General Services  
Metropolitan Government of Nashville and Davidson County  
P.O. Box 196300  
Nashville, TN 37219  
612-830-1191  
nancy.whittemore@nashville.gov

Jamie Accurso  
Clty of Cincinnati  
1408 Queen City Avenue  
(513) 352-5403  
jamie.accurso@cincinnati-oh.gov

Jena Richter, Property Manager  
Ohio Property Management Operations Branch  
GSA/PBS Southern Service Center Operations Division  
550 Main Street, Room 1413  
(513) 246-4418  
jennifer.richter@gsa.gov

Timothy J. Comer  
Administrative Officer  
AWSS -SCR-CO Branch  
Great Lakes-Midwest - Ohio, Kentucky, Michigan, Illinois,  
Indiana & Wisconsin  
Phone -513-263-3399 Cell -513-200-7300

### Local References

Jacob Carpenter, Maintenance Operations Manager  
Aisin Automotive Casting Tennessee, Inc.  
221 Frank L. Diggs Dr. Clinton, TN 37716  
865-457-4581 ext 25169 865-457-4583

Keith Neely  
University Health Systems, inc. – UT Medical Center  
Vice President  
865-305-9552  
wneely@utmck.edu

Teresa Copeland  
OrthoTennessee/Knoxville Orthopaedic Surgery Center  
256 Fort Sanders West Blvd  
Knoxville, TN 37922  
(865)769-4507  
Teresa.copeland@orthotennessee.com  
<http://www.orthotennessee.com>  
<http://kosc.com/>

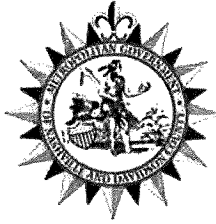
Pete Crowley, Senior Vice President, Property Development  
Discovery, Inc.  
9721 Sherrill Blvd  
Knoxville, TN 37932  
865-560-4534  
pcrowley@scrippsnetwork.com

*"I have been in the business of facilities management with the federal government for over 30 years and worked with dozens of contractors, but this team from Messer Construction have far and away been the most professional and knowable team I have ever worked with. Their professional demeanor, diligence and excellent communication of project progress have been impeccable."*

Timothy J. Comer  
Great Lakes Midwest

Metropolitan Government  
of Nashville and Davidson County

David Briley, Mayor  
Nancy Whittemore, Director



Department of General Services

Richard H. Fulton Campus  
730 2<sup>nd</sup> Avenue South  
P.O. Box 196300  
Nashville, TN 37219-6300  
615-862-5050, 615-862-5035 (fax)

May 20, 2019

To Whom It May Concern:

The Nashville-Davidson County Metropolitan Government Department of General Services has contracted with the Messer Construction Company for thirteen capital projects over the past ten years. Messer constructed Metro's first LEED Silver certified building (Howard Office Building Renovation and Expansion) and Metro's first LEED Platinum building (Fire Station 19). In addition, Messer has constructed ten more buildings for Metro General Services: Bellevue Library (LEED Gold), Fire Stations 21, 30, 33 (LEED Silver), Fire Stations 3, 11, 31 (LEED Gold), Madison Crime Lab and Police Precinct (LEED Silver), and 2 LEED Gold police precincts (Midtown Hills and West). Fire Station 32 is currently under contract.

Messer is committed to being a collaborative partner, whether it is working with stakeholders, problem solving challenges, standing behind their work, or completing projects on time, within budget and safely.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Whittemore", is written over a horizontal line.

Nancy Whittemore, Director  
Metro Department of General Services

## Exhibit D

### **KNOXVILLE PUBLIC SAFETY COMPLEX SPECIAL CONDITIONS OF THE CONTRACT**

The Special Conditions of the Contract are meant to be viewed as a compliment to the General Conditions of the Contract. Should any discrepancy or ambiguity be noted, the Special Conditions of the Contract shall apply and the General Conditions of the Contract shall defer to Special Conditions of the Contract. The term "Design Consultant" shall be construed to mean "Architect". The terms "City", "Owner", shall be construed to mean the City of Knoxville, Tennessee. The term "Program Manager/Management (PM)" and "Owner's Representative" shall be construed to mean "Volkert, Inc.". Where General Conditions refer to Owner; it shall be recognized to include the Owner's Representative (PM) as per Owner/Owner Representative Contract.

#### 1. INTENT OF DRAWINGS AND CONTRACT DOCUMENTS

- A. Clarification of any conflict in or between Contract Documents shall be made only by written Addenda during the bid period and sent to all perspective Bidders. The Program Manager and Design Consultant shall not be responsible for verbal answers regarding intent or meaning of the Contract Documents, or for any verbal instructions, by whomsoever made, prior to the award of the Contract.
- B. All designed systems and/or assemblies are to be proposed and bid as complete assemblies or operational systems. Drawings are to be construed as an indication of intent and not attempting to fully obtain or detail required work.

#### 2. COPIES OF DRAWINGS AND SPECIFICATIONS

- A. As specified in the Special Instructions to Bidders, the Contractor shall have determined the number of sets of Contract Documents required for the construction of the specified work. The cost of all Contract Documents required for the construction of the specified work, as determined by the Contractor, shall have been included in his Proposal.

#### 3. NOTICE TO PROCEED

- A. The Contractor may proceed to award subcontracts, assemble materials, etc., at any given time after Award of Contract and the Notice to Proceed with the work has been issued. For the purpose of liquidated damages, the Contractor's official time for the starting of construction work shall be the actual date of the Notice to Proceed which shall be issued by the City.

#### 4. SHOP DRAWINGS AND SUBMITTALS

- A. The General Contractor shall submit a schedule of submittals for approval to the Design Consultant, itemizing all required submittals within ten (10) days of receiving the Notice to Proceed.

- B. All shop drawings and/or submittals shall be dated and numbered sequentially. A re-submittal shall be designated by adding an "R" to the original submittal number.
- C. All shop drawings and submittals shall be coordinated with all respective trades and approved by the General Contractor as so coordinated prior to submission to Design Consultant. Shop drawings and/or submittals not approved and stamped by the General Contractor shall be returned to Contractor.
- D. Truss design submittals shall be specifically approved by the General Contractor and mechanical subcontractor prior to Design Consultant's review.
- E. Six copies of all shop drawings and submittals shall be presented to the Design Consultant with a completed Material Approval Submittal form containing the project name, number of items, name of vendor/supplier and sufficient description to identify said submittal.
- F. The Contractor shall fax Copies of all Material Approval Submittal forms to the Program Manager at the time each Submittal is delivered to the Design Consultant.
- G. All shop drawings and/or submittals shall be submitted sufficiently in advance of construction requirements to allow checking, correcting, resubmitting, and rechecking.
- H. Once the Design Consultant has approved a submittal, one set shall be delivered to the Program Manager with a copy of the completed Material Submittal Approval form. The Design Consultant shall indicate the status of the submittal on the form.
- I. Unless specifically requested by the Design Consultant, submittals marked "Approved as Noted" or "Approved as Corrected", need not be resubmitted.
- J. A copy of Submittals marked "Rejected" or "Revise and Resubmit" by the Design Consultant as well as the Material Approval Submittal form should be provided to Program Manager. The Design Consultant shall indicate the status of the submittal on the transmittal sheet.
- K. The Design Consultant reserves the right to withhold approval of interior and exterior finishes until all related submittals and shop drawings are received.
- L. The General Contractor, Design Consultant and Program Manager shall utilize the internet based project management system to track and record submittals described in the Project Manual.

5. REQUESTS FOR INFORMATION

- A. Request for Information (RFI) shall be sequentially numbered and submitted to the Design Consultant using the internet base project management system as described in the Project Manual.

- B. The RFI shall contain sufficient, specific, information to provide the Design Consultant with a clear understanding of the item or concerns in question. The Contractor may include additional information in the form of photographs, diagrams, or other pertinent documentation, to assist in the clarification of the RFI.
- C. The Design Consultant shall provide an answer to the Contractor in the space provided on the RFI form. Should additional information be required for the Design Consultant response, that information shall be attached to the RFI form.
- D. A copy of the completed Request for Information form shall be provided to the Program Manager.
- E. Failure to submit a written RFI to the Design Consultant may negate a Contractor's claim for additional time or money should a Design Consultant fail to respond to an RFI in a timely manner.

6. PROGRESS SCHEDULE

- A. CPM Project Schedule for Construction, as described below, shall be prepared and is the responsibility of the Contractor. Subcontractors and suppliers participating in the project shall also contribute in developing and maintaining an accurate Project Schedule. The approved project schedule shall be used to measure the progress of the work, aid in evaluating time extensions, and to provide the basis for all progress payments.
- B. The CPM schedule shall be the basis for measuring Contractor progress. Failure of the Contractor to provide all information, as specified below, shall result in the disapproval of the entire project schedule submission and the inability of the Program Manager and Design Consultant to evaluate Contractor progress for payment purposes.
- C. Project Schedule - General Requirements:
  - 1. There will be a Pre-Scheduling Conference to be conducted at the project site to review the project schedule requirements. The Pre-Scheduling Conference shall include but not be limited to reviewing the Contractor's software, verifying the availability of qualified personnel to create and maintain the schedule, review schedule updating and reporting requirements, and review time extension and delay claim procedures.
  - 2. In preparation of the schedule, the Contractor shall comply with the procedures outlined in AGC's "Construction Planning & Scheduling".
  - 3. The schedule shall be a Critical Path Method (CPM) schedule and shall be provided in Gantt chart format.
  - 4. The schedule's time frame should be extended from the date of Notice to Proceed through the date of Substantial Completion and Final Completion

as established by the contract documents.

5. The schedule shall include an appropriate and reasonable level of detail to allow for accurate monitoring of project progress. Items to be included in the schedule shall be further described below.
6. The schedule shall be prepared using input from the General Contractor's subcontractors and suppliers.
7. The initial schedule shall be submitted within 15 calendar days of Notice to Proceed.
8. The schedule shall be updated a minimum of once per month with Design Consultant approved time extensions as necessary. An updated schedule shall be submitted with the Contractor's application for payment, and also posted on the internet based project management system described in the Project Manual. Failure to submit an updated schedule with the application for payment may cause the application for payment to be rejected.

D. Contractor's CPM Construction Schedule:

1. Scheduling Consultant: The Contractor shall retain a scheduling consultant to prepare and update the construction schedule. The scheduling consultant shall attend all meetings relating to project progress, delays or time impacts. The Program Manager may elect to waive the requirements to retain a scheduling consultant should the Contractor employ skilled personnel qualified in the preparation and reporting of CPM schedules.
2. Level of Detail and Items to be Included in Schedule:
  - a) Activity Duration: Define activities so that no activity has a duration of more than 30 days unless specifically approved by Design Consultant and Program Manager.
  - b) Procurement and Submittal Activities: Include procurement process activities for long lead time items. A long lead-time item is defined as one with a lead-time of more than 30 days. Procurement activities are to be broken down into submittals (submittal review and approval time should be incorporated into the submittal activity duration), purchasing and fabrication / delivery.
  - c) Start-up and Testing Time: Include activity line items for start-up and testing.
  - d) Owner Activities: Owner activities that could impact progress shall be included as separate activities in the project schedule. This includes work to be performed by Owner Direct Contractors. An example of an owner activity would be delivery and set-up of portables.
  - e) Milestones: Include milestones for critical days or events in the

schedule. As a minimum, milestones should be established for Notice to Proceed, Substantial Completion and Final Completion.

E. Schedule Layout and Presentation:

1. The schedule shall be in Gantt chart format with the critical path activities clearly delineated from those activities containing float time.
2. Each activity bar shall be labeled with the activity name adjacent to its representative bar.
3. Milestone activities shall be represented by a unique symbol on the Gantt chart, demarcating them from other activity bars.
4. The schedule shall display logic arrows linking predecessor and successor activities. All activities must have a predecessor and a successor constraint except the Notice to Proceed activity (which will have no predecessor) and the Final Completion activity (which will have no successor).
5. The head of the schedule shall include columns for the following activity information:
  - a) Activity ID
  - b) Activity Name/Description
  - c) Duration
  - d) Early Start
  - e) Late Start
  - f) Actual Start
  - g) Early Finish
  - h) Late Finish
  - i) Actual Finish
  - j) Total Float
6. A minimum of three copies of the schedule shall be submitted at each schedule submission.

F. The schedule shall be updated a minimum of once per month and should coincide with the submission of the Contractor's application for payment. Failure to submit an updated schedule with the application for payment may cause the application for payment to be rejected.

1. Should the Program Manager or Design Consultant deem that the project is running behind schedule, the Program Manager or Design Consultant can request that the schedule be updated more frequently.
2. The initial approved schedule shall be designated as the baseline schedule and shall represent the anticipated sequencing and activity duration of the construction project. The baseline schedule will be the schedule

referenced against the updated schedule to determine schedule progress and the effect of changes. Each update will become the baseline for the subsequent update.

3. When performing the schedule update, actual start and finish dates for each activity shall be used. Automatic updates using default settings inherent in the scheduling software will not be allowed.
4. When reporting the schedule, the baseline and updated schedules shall be displayed on the same chart in order for the as-built condition to be easily compared against the baseline.
5. Activity progress shall be clearly indicated on the activity bar as a superimposed progress bar.
6. With the updated schedule provide a report of every change including, but not limited to changes in logic, actual start and finish dates and activity durations.

G. Requests for Time Extensions:

1. The CPM schedule shall be the basis by which a determination will be made as to whether or not the Contractor is due an extension of time under the provisions of the contract.
2. For each delay or time extension claim, the Contractor shall submit a justification report that should include the following items:
  - a) A brief explanation of the cause of the change.
  - b) A CPM schedule incorporating the change and clearly depicting the impact to the final completion date of the project using the latest updated schedule as a baseline.
  - c) Delays that are the sole responsibility of the contractor will not be considered as reason to grant time extension to the final completion date for the contract.

H. Program Manager:

Should the project's budget and/or schedule become a concern for the Owner, the Program Manager shall maintain the latitude to, at its discretion, to institute time and cost control measures during the construction phase of the work which, in general, shall provide better Owner control in expediting the timely completion of the project. Program Management as well as ACS personnel reserve the right to visit the site and observe work in progress at any given time.

7. METHOD OF RECOVERY

- A. A Scheduling Meeting shall be held at the end of each month. The purpose of this meeting shall be for the Program Manager and/or his representative to meet with all parties to discuss alternate solutions for updating and/or compressing



construction schedules. At this meeting, if the Project is behind schedule in any area, the Contractor shall submit to the Program Manager, a Method of Recovery. The Contractor shall, with due diligence, make every effort to adhere to this construction schedule. Slippage of construction schedules shall not be tolerated. Schedule slippage without alternate solutions that shall allow the schedule to be met are grounds for Contract cancellation. Method of Recovery shall not increase the Contract amount.

8. SCHEDULE OF VALUES

- A. Prior to submitting the first Application for Payment, the Contractor shall provide to the Program Manager a schedule of values allocated to various portions of the Work, prepared in such form, and supported by all such data substantiating its accuracy, as the Design Consultant/Program Manager may require. This schedule, unless objected to by the Program Manager, shall be used as a basis for previewing the Contractor's Applications for Payment.

9. ELECTRICAL POWER AND JOB SITE UTILITIES

- A. The General Contractor shall be responsible for the cost of all electrical power and all other utilities necessary for construction, until such time as the Substantial Completion date is established and agreed upon by all parties. Once the date of Substantial Completion has been established, said utilities shall be transferred into the Owner's name. Utility bills will be pro-rated, based upon the established date of Substantial Completion.

10. APPLICATION FOR PAYMENT/PAY REQUESTS

- A. All Applications for Payment shall be submitted to the Design Consultant for consideration, monthly on or about the 25<sup>th</sup> of each month. The Design Consultant and Program Manager shall then review all work and agree as to the percentage of completion of each phase of work in question. No approval of any pay requests shall be made until all of the involved parties are in agreement as to the stage and/or percentage of completion.
- B. Four original sets of each application are required: One for the Program Manager, One for the Design Consultant, and Two for the Owner.
- C. The Design Consultant in conjunction with the Program Manager shall maintain the option to "red line" at its discretion, those items which, having been submitted for payment, are not properly documented or which are not properly documented as to support costs of Contract Change Authorizations or Change Orders.
- D. With each Application for Payment the Contractor is required to submit the following:
  - 1. Contract Notice to Proceed Date
  - 2. Original Contract Completion Date
  - 3. Current Revised Contract Completion Date
  - 4. Number of Days Elapsed

- 5. Percent of Time Elapsed
  - 6. Percentage of Contract in Place (Stored materials may be included)
  - 7. FEIN #
- E. Such application shall be notarized and supported by such data as the Design Consultant in conjunction with the Program Manager may require as substantiating the Contractor's right to payment. Utilizing ABC Form C-11, a graph indicating the monthly projected and actual construction schedule shall be submitted each month with the Contractor's Application for Payment.
- F. With the monthly Application for Payment, the General Contractor shall submit a Waiver of Lien for the value of the work completed.
- G. Payment for materials stored off-site may not be requested unless materials are stored in an insured and bonded warehouse. Certificates of Insurance must be attached to the pay request. Copies of both the purchase order and copies of material invoices shall be submitted with the Request for Payment on which the stored materials are listed.
- H. The Contractor's FEIN number must appear on all Applications for Payment.

11. UNKNOWN CONDITIONS

- A. If, in the performance of the Contract, subsurface or latent conditions are found to be materially different from those indicated by the Drawings and/or Project Manual, or unknown conditions of an unusual or impractical nature are disclosed differing materially from conditions usually inherent in work of the character shown and specified, the attention of the Design Consultant and the Program Manager shall be called immediately to such conditions before they are disturbed. Upon such notice, or upon such observation of conditions, the Owner may instruct the Design Consultant to promptly make such changes in the Drawings and/or Project Manual as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the Work resulting from such changes shall be adjusted as provided under CHANGES IN THE WORK or EXTRA WORK as set forth in the GENERAL CONDITIONS. All costs and claims including time extension are required to be included in the Contractor's response to Change Order Request or Request for Proposal. Claims for additional costs and/or time arising after approval shall be disallowed and this condition is accepted by the Contractor upon executing Owner/Contractor Agreement.

12. CHANGES IN THE WORK

- A. All Contract Change Requests shall be submitted to the Design Consultant complete with the substantiating documentation for review and approval. All Contract Change Requests shall be in a format in which all units of costs are so indicated, to include but not limited to the following: labor, material, equipment, OH&P, vendor and/or supplier, along with the required trade labor cost breakdown to perform this work. The Design Consultant shall determine whether, in its opinion, the request should be approved or disapproved, with or without additional time, and submit the Contract Change Request to the Program Manager

for review. No Contract Change Request should be submitted to the Program Manager without the prior review and written recommendation from the Design Consultant. Not all changes shall constitute a time extension.

- B. Should the Design Consultant and the Program Manager concur as to the approval of a Contract Change Request, additional monies and/or time shall be added to the Contract through the execution of a Contract Change Order.
- C. If the Design Consultant and the Program Manager refuse to approve a Contract Change Request, no additional work shall be initiated, no additional time granted and no additional monies shall be added to the Contract.
- D. Should the Design Consultant and the Program Manager determine that work detailed in a Contract Change Request is included in the Contract Documents, and therefore should have been included in the Contractor's bid, the Contract Change Request shall be disapproved and no additional monies or time shall be added to the Contract. If it is deemed that said work is required as indicated by the Contract Documents, the Design Consultant and Program Manager reserve the right to require that the Contractor perform all said work in the Contract Change Request for the completion of the Work in accordance with the Contract Documents. The Contractor shall perform this work at no additional cost to the Owner and with no additional funds or time added to Contract.
- E. When work specified in a Contract Change Request entails the use of a subcontractor, the subcontractor must provide to the Contractor a detailed breakdown of costs. This shall include labor, materials, including units, and any other specific costs entailed for the completion of the work. The subcontractor shall also indicate its OH&P. This information shall be submitted in full for each subcontractor as part of the substantiating documentation required for each Contract Change Request. Bonding, insurance, administrative, supervisory, or their related overhead costs are considered a part of a subcontractor's overhead and shall not be included as additional costs.
- F. No money for general conditions will be considered where time only is added to the Contract by a Change Order.

### 13. INSPECTIONS BY GENERAL CONTRACTOR

- A. The Contractor's Job Superintendent shall submit to the Program Manager and to the Design Consultant, daily construction reports detailing all construction activity taking place each day. The daily construction reports shall indicate at minimum: the number of employees on site, the number of subcontractors and subcontractor's employees on site, a brief description of work activities, description of any delays and/or problems incurred, any interference with work and/or among trades, and weather conditions throughout the day. Each daily report shall indicate the date and time, and be submitted in sequence. The report shall be submitted by 10:00 a.m. the following day.
- B. The General Contractor's Superintendent or designated representative shall inspect

all work performed by the General Contractor and all subcontractors. Upon his approval of the work, and after any and all required corrections to the work have been completed, the Design Consultant and Program Manager shall be notified in writing that the construction is ready for inspection. All items found by the Design Consultant in conjunction with Program Management which are not in conformance with the Contract Documents shall be corrected before local officials are called to perform inspections or tests.

14. PROGRESS MEETINGS

- A. Progress Meetings shall be scheduled by the Program Manager. The frequency of the meetings will be determined by the Program Manager in conjunction with the Design Consultant. The Contractor and/or representative, Design Consultant and/or his representative, the Program Manager and/or his representative, and all subcontractors whose work is in progress or who are within two weeks of initiating work, shall be present at these meetings.

15. TESTING

- A. The Owner has hired a testing agency that will be performing all construction and materials testing. The General Contractor is responsible to notify the Owner's testing agency prior to performing any activities that require testing. Notification shall be provided from the General Contractor a minimum of 24 hours before said activities are scheduled to be performed. In the event that the item tested does not conform to the requirements of the Contract Documents, the General Contractor shall pay for said initial testing and any additional testing required while correcting the nonconforming work. The Owner/Program Manager/Design Consultant reserves the right to require additional testing.

16. COMPLETION OF FINAL PUNCH LIST ITEMS

- A. The Project Superintendent shall remain on site, on a full time basis, until such time as the punch list items have been verified as 100% complete, by the design consultant.

18. MINIMUM STAFFING REQUIREMENTS

- A. The General Contractor shall provide the following:
  - 1) Dedicated Project Manager
  - 2) Dedicated Assistant Project Manager on site until all Submittals are approved.
  - 3) Dedicated Superintendent on site.
  - 4) 2 Assistant Superintendents on site:
    - a. Building Exterior Superintendent – Exterior envelope start through hardscape completion.
    - b. Interior Superintendent – Start of MEP through overhead inspection complete milestone.
  - 5) Safety Manager when 50 + personnel are on site. This can be one of the other Superintendents if he is 30hr OSHA Certified.

Exhibit E

**KNOXVILLE NEW PUBLIC SAFETY COMPLEX**  
**PROJECT MANAGEMENT COMMUNICATIONS REQUIREMENTS**

**PART 1 - GENERAL**

**1.1 RELATED DOCUMENTS**

- A. Attention is directed to the CONTRACT, GENERAL CONDITIONS, SPECIAL CONDITIONS and all Sections within DIVISION 1 – GENERAL REQUIREMENTS, which are hereby made a part of this Section.
- B. Refer to specification SECTION 01300 - SUBMITTALS for additional information.

**1.2 SUMMARY**

- A. Project Management Communications: The Contractor whose project shall use the Internet web based project management communications tool, TeamBuilder® ASP software and protocols included in that software during this project. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.
  - 1. Project management communications is available through TeamBuilder® as provided by "e-Builder®" in the form and manner required by the City of Knoxville.
  - 2. The project communications database is on-line and fully functional. User registration, electronic and computer equipment, and Internet connections are the responsibility of each project participant. The sharing of user accounts is prohibited.
- B. Training: TeamBuilder® will provide a group training session scheduled by the Construction Manager, the cost of which is included in the initial user's fee. Users are required to attend the scheduled training sessions they are assigned to; requests for specific scheduled classes will be on a first come first served basis for available spaces. Companies may also obtain additional or group training from TeamBuilder at their own expense, please contact TeamBuilder® for availability and cost.
- C. Support: TeamBuilder® will provide on-going support through on-line help files.
- D. Project Archive: The archive shall be available to each team member at a nominal cost. The archive set will contain only documents that the firm has security access to during

## PROJECT MANAGEMENT COMMUNICATIONS

construction. All legal rights in any discovery process are retained. Archive material shall be ordered from e-Builder®.

- E. Copyrights and Ownership: Nothing in this specification or the subsequent communications supersedes the parties' obligations and rights for copyright or document ownership as established by the Contract Documents. The use of CAD files, processes or design information distributed in this system is intended only for the project specified herein.
- F. Purpose: The intent of using TeamBuilder® is to improve project work efforts by promoting timely initial communications and responses. Secondly, to reduce the number of paper documents while providing improved record keeping by creation of electronic document files.
- G. Requirements and Cost: The Owner and Owner's representatives, the Construction Manager and his representatives, the Architect and his consultants, and the General Contractor shall use the Internet based project communications system and database hereafter referred to as TeamBuilder® during construction of this project until twelve (12) months after the date of Substantial Completion or later as determined by the Owner.
  - 1. The Owner has provided the TeamBuilder® service. The General Contractor and his subcontractors shall obtain user licenses according to the following schedule:
    - a. Contract value under \$ 1,000,000, no user required.
    - b. Contract value \$1,000,000 through \$5,000,000 provide one (1) user.
    - c. Contract value \$5,000,001 through \$10,000,000 provide two (2) users.
    - d. Contract values over \$10,000,000 provide three (3) users.
    - e. Additional user's licenses may be obtained as needed by a contractor.
  - 2. The General Contractor shall obtain user licenses within 15 days commencing the execution of the Owner Contractor Agreement.
  - 3. Initial cost is \$650.00 per user for each user license for the first year. Initial user license fees shall be paid to "e-Builder®" via credit card.
  - 4. User licenses shall be renewed each year at a cost of \$650.00 until twelve (12) months after substantial completion. Payment for renewal of user licenses shall be made directly to "e-Builder®" the provider of TeamBuilder® in a form satisfactory to them.
- H. Authorized Users: Access to the web site will be by individuals who are licensed users.
  - 1. Individuals may use the User Application included in these specifications or may request the User Application.
  - 2. Submit completed user application forms with credit card information. Mail to: e-Builder, 100 West Cypress Creek Rd., Suite 845, Ft. Lauderdale, FL 33309, Attn:

## PROJECT MANAGEMENT COMMUNICATIONS

John Antevy.

3. Authorized users will be contacted directly by the web site provider, TeamBuilder®, who will assign the temporary user password.
  4. Individuals shall be responsible for the proper use of their passwords and access to data as agents of the company in which they are employed.
- I. Administrative Users: Administrative users have access and control of user licenses and all posted items. **DO NOT POST PRIVATE OR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!** Improper or abusive language toward any party or repeated posting of items intended to deceive or disrupt the work of the project will not be tolerated and will result in deletion of the offensive items and revocation of user license at the sole discretion of the Administrative User(s).
- J. Communications: The use of fax, email and courier communication for this project is discouraged in favor of using TeamBuilder® to send messages. Communication functions are as follows:
1. Document Integrity and Revisions:
    - a. Documents, comments, drawings and other records posted to the system shall remain for the project record. The authorship time and date shall be recorded for each document submitted to the system. Submitting a new document or record with a unique ID, authorship, and time stamp shall be the method used to make modifications or corrections.
    - b. The system shall make it easy to identify revised or superseded documents and their predecessors.
    - c. Server or Client side software enhancements during the life of the project shall not alter or restrict the content of data published by the system. System upgrades shall not affect access to older documents or software.
  2. Document Security:
    - a. The system shall provide a method for communication of documents. Documents shall allow security group assignment to respect the contractual parties' communication except for Administrative Users. **DO NOT POST PRIVATE OR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!**
  3. Document Integration:
    - a. Documents of various types shall be logically related to one another and discoverable. For example, requests for information, daily field reports, supplemental sketches and photographs shall be capable of reference as related records.
  4. Reporting:

## PROJECT MANAGEMENT COMMUNICATIONS

- a. The system shall be capable of generating reports for work in progress, and logs for each document type. Summary reports generated by the system shall be available for team members.
5. Notifications and Distribution:
  - a. Document distribution to project members shall be accomplished both within the extranet system and via email as appropriate. Project document distribution to parties outside of the project communication system shall be accomplished by secure email of outgoing documents and attachments, readable by a standard email client.
6. Required Document Types:
  - a. RFI, Request for Information.
  - b. Submittals, including record numbering by drawing and specification section.
  - c. Transmittals, including record of documents and materials delivered in hard copy.
  - d. Meeting Minutes.
  - e. Application for Payments (Draft or Pencil).
  - f. Review Comments.
  - g. Daily Field Reports.
  - h. Construction Photographs.
  - i. Drawings.
  - j. Supplemental Sketches.
  - k. Schedules.
  - l. Specifications.
- K. Record Keeping: All documents, except for paper documents that require original signatures and large format documents (greater than 8 ½ x 11 inches), shall be submitted by transmission in electronic form to the TeamBuilder web site by licensed users.
  - a. The Owner and his representatives, the Program Manager and his representatives, the Architect and his consultants, the General Contractor, and his sub-contractors shall respond to documents received in electronic form on the web site, and consider them as if received in paper document form.
  - b. The Owner and his representatives, the Program Manager and his representatives, the Architect and his consultants, General Contractor and his sub-contractors reserves the right to and shall reply or respond by transmissions in electronic form on the web site to documents actually received in paper document form.
  - c. The Owner and his representatives, the Program Manager and his representatives, the Architect and his consultants, the General Contractor and his sub-contractors reserves the right to and shall copy any paper document into electronic form and make same available on the web site.
  - d. The following are some but not all of the paper documents which require original signature:
    - 1) Contract



## PROJECT MANAGEMENT COMMUNICATIONS

- 2) Change Orders
- 3) Application & Certificates for Payment
- 4) Request for Proposals

Minimum Equipment and Internet Connection: In addition to other requirements specified in this Section, the Owner and his representatives, the Program Manager and his representatives, the Architect and his consultants, the General Contractor and his sub-contractors required to have a user license(s) shall be responsible for the following:

2. Providing suitable computer systems for each licensed user at the users normal work location<sup>1</sup> with high-speed Internet access, i.e. DSL, local cable company's Internet connection, or T1 connection.
3. Each of the above referenced computer systems shall have the following minimum system<sup>2</sup> and software requirements:
  - a. Desktop configuration (Laptop configurations are similar and should be equal to or exceed desktop system.)
    - 1) PC system 500 MHz Intel Pentium III or equivalent AMD processor
    - 2) Or, Macintosh 660 AV (Power PC)
    - 3) 128 MB Ram
    - 4) Display capable of SVGA (1024 x 768 pixels) 256 colors display
    - 5) 101 key Keyboard
    - 6) Mouse or other pointing device
  - b. Operating system and software shall be properly licensed.
    - 1) Internet Explorer or other browser (current version is a free distribution for download). This specification is not intended to restrict the host server or client computers provided that industry standard HTTP clients may access the published content.
    - 2) Adobe Acrobat Reader (current version is a free distribution for download).
    - 3) Or, users intending to scan and upload to the documents area of TeamBuilder® should have Adobe Acrobat (current version must be purchased).
    - 4) Users should have the standard Microsoft Office Suite (current version must be purchased) or the equivalent.
    - 5) Users may download the latest free distribution of Volo View Express, by Autodesk, if they do not have other CAD software able to view Autocad 2000 drawing files.

## PART 2 - PRODUCTS (Not Applicable.)

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<sup>1</sup> The normal work location is the place where the user is assigned for more than one-half of his time working on this project.

<sup>2</sup> The minimum system herein will not be sufficient for many tasks and may not be able to process all documents and files stored in the TeamBuilder® Documents area.

PROJECT MANAGEMENT COMMUNICATIONS

PART 3 - EXECUTION (Not Applicable.)

END OF SECTION 01310

SUPPLEMENTARY GENERAL CONDITIONS

1. Add the following:

All submittals for color selections, to be made by the Architect for the entire project shall be submitted at the same time within 45 days from the "Notice to Proceed". Piece-meal submittals for color selection will not be permitted.

**Provide as follows unless otherwise specified:**

- a. All digital submittals shall be sent to the Architect no later than 45 calendar days from "Notice To Proceed" to **McCarty Holsaple  
McCarty, Inc. 550 W. Main Street, Suite 300, Knoxville, TN 37902**
- b. Paper submittals may be required by the Architect. Contractor and subcontractors shall be notified at the Pre-Construction Conference if this shall be implemented.
- c. Submittals regarding mechanical, plumbing, electrical and structural items shall be sent directly to the Engineer of record (see cover sheet of the specification for address). A digital copy of the transmittal shall be sent to the Architect at the following email address: **McCarty Holsaple  
McCarty, Inc. 550 W. Main Street, Suite 300, Knoxville, TN 37902**

2. Add the following:

"If the bidder desires to substitute an "equal", he must secure written approval by the Architect of qualification to bid ten (10) days prior to date.

On all items specified as or equal substitutions must be submitted to the Architect ten (10) days prior to bid opening and Architect will act on substitution five (5) days prior to bids and notify all Contractors.

The request for substitutions are to be filled out completely and must be received prior to bid. Any subcontractor and/or material supplier that was not "approved" and their price is used at bid time will be the Contractors problem to absorb any cost associated with the use of a "non-approved material or equipment. If the "approval" is not listed in the addendum, then the "approval" is not accepted.

3. SUBSTANTIAL COMPLETION

Add the following:

All manufactures warranties shall commence on the date as set forth on the Substantial Completion Form, no exceptions.  
Contractor shall furnish to the Architect a written letter of "notification" that all "Punch List" items have been completed prior to re-inspection.

4. Special Warranties:

Change as follows:

- (1) The Contractor shall deliver to the Owner through the Architect all special or extended warranties required by the Contract Documents from the Contractor, Subcontractors, and suppliers.

5. Applicable Codes:

2017 National Electrical Code  
2018 International Plumbing Code  
2018 International Mechanical Code  
2018 International Fuel Gas Code  
2018 International Fire Code  
2018 International Building Code

ANSI A117.1-2009 Accessible and Usable Buildings and Facilities

6. **Liquidated damages will be assessed at a rate of 6% per annum.**

7. If this contract extends thirty (30) days past Schedule Completion Date, Owner shall deduct from the Contractor's final payment, a sum equal to the additional expense incurred by the Owner for the Architect for contract administration past scheduled completion date.
8. Prior to final acceptance by the Owner, the Contractor shall furnish a letter to the Owner, certifying that the material used on this project contained no asbestos.
9. **ADA Compliance.** With regard to the services performed under this Agreement, Contractor will comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA"). Contractor agrees that it will defend, indemnify and hold the City harmless against any and all claims, demands, suits or causes of action which arise out of any negligent and/or intentional act or omission by Contractor, its employees, agents or representatives that violates the ADA. Contractor agrees that the City will not be responsible for any costs or expenses arising from Contractor's failure to comply with the ADA.